12–20–02 Friday
Vol. 67 No. 245 Dec. 20, 2002
Pages 77907–78120

Federal Register

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 67 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register

Vol. 67, No. 245

Friday, December 20, 2002

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 67, No. 245
Friday, December 20, 2002

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1942

RIN 0570–AA36

Rural Business Enterprise Grants and Television Demonstration Grants; Definition of ''Rural Area'' and New Types of ''Eligible Small and Emerging Private Business Enterprises''

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Rural Business—Cooperative Service (RBS) is amending the Rural Business Enterprise Grant (RBEG) Program regulation by revising the definition of rural area to comply with the amendment to section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) made by section 6020 of the Farm Security and Rural Investment Act of 2002. The intended effect of this action is to provide a consistent definition of rural and rural area for programs administered under the Rural Community Advancement Program. RBS will be adding nonprofit entities and other tax-exempt organizations as eligible small and emerging private business enterprises under certain circumstances to comply with the amendment to section 310B(c)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C.1932(c)) made by Section 6014 of the Farm Security and Rural Investment Act of 2002. The intended effect of this action is to give priority to the newly authorized small and emerging private business enterprises.

EFFECTIVE DATE: December 20, 2002. Comments must be received on or before February 18, 2003.

ADDRESSES: Submit written comments via U.S. Postal Service, in duplicate, to the Regulations and Paperwork Management Branch, Attention Cheryl Thompson, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742. Submit written comments via Federal Express, in duplicate, to the Regulations and Paperwork Management Branch, Attention Cheryl Thompson, U.S. Department of Agriculture, Rural Development, 300 7th Street SW., 7th Floor, Washington, DC 20024. Comments may be submitted via the Internet by addressing them to *comments@rus.usda.gov* and must contain the word ''rural'' in the subject. All written comments will be available for public inspection during normal working hours at the 300 7th Street SW., address listed above.

FOR FURTHER INFORMATION CONTACT: Amy Cavanaugh, Rural Development Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave. SW., Washington, DC 20250–3225, Telephone (202) 690–2516. The TDD number is (800) 877–8339 or (202) 708–9300.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be non-significant under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.769, Rural Development Grants.

Paperwork Reduction Act

There are no reporting and recordkeeping requirements associated with this interim final rule.

Intergovernmental Review

The RBEG Program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RBS will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' and in the notice related to 7 CFR part 3015, subpart V (48 FR 29112, June 24, 1983).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq*, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in

expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132, Federalism

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Background

This regulatory package is an initiative mandated from Congress to revise the definition of rural area and add nonprofit entities and other tax-exempt organizations as eligible small and emerging private business enterprises when certain conditions exist. Section 6020 of the Farm Security and Rural Investment Act of 2002, Public. Law. 107–424, amended section 343(a) of the Consolidated Farm and Rural Development (ConAct) to change the definition of rural area for several programs authorized under that Act, including the RBEG Program. Section 343(a)(13) of the ConAct provides, in part, as follows:

(13) Rural and Rural Area—

(A) In General.—Except as otherwise provided in this paragraph, the terms 'rural' and 'rural area' mean any area other than—

(i) A city or town that has a population of greater than 50,000 inhabitants; and

(ii) The urbanized area contiguous and adjacent to such as city or town.

The revised definition in Section 343(a) of the ConAct supersedes the current definition for rural area used for the RBEG Program. The current definition includes ''all territory of a State that is not within the outer boundary of any city having a population of 50,000 or more and its immediately adjacent urbanized and urbanizing areas with a population density of more than 100 persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.'' The new definition in Section 343(a)(13) expands eligibility to include urbanizing areas; adds ''town'' to an area which can have a population of 50,000 or more; and deletes the requirement that the urbanized area be ''immediately'' adjacent to the city, requiring only that it be ''contiguous and adjacent'' to the city or town. Cities or towns with populations greater than 50,000 inhabitants and the urbanized area, which is contiguous and adjacent to such cities and towns, are ineligible for the RBEG Program. This revision is intended to help the Agency simplify the rural area eligibility determination process and provide a consistent definition of rural area for programs administered by RBS under the Rural Community Advancement Program.

Congress also added nonprofit entities and other tax-exempt organizations as eligible small and emerging private business enterprises under certain circumstances. The end result of a project funded under the RBEG Program must finance or develop a small and emerging private business enterprise. A small and emerging private business enterprise is defined as a business that has no more than 50 new employees and has less than $1 million in gross revenues. Under the new legislation, if the small and emerging private business enterprise is a nonprofit entity or other tax-exempt organization located in a city, town or unincorporated area with a population of 5,000 or less and has a principal office on land of an existing or former Native American reservation, it is exempt from meeting the small and emerging private business enterprise definition previously discussed. In addition, it is intended for these types of business enterprises to receive additional priority points for funding.

Discussion of Interim Final Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, it would be contrary to the public interest to wait for public comment before implementing the mandated Act. Comments will be accepted for 60 days after publication of this interim final rule and will be considered in the development of the final rule.

List of Subjects in 7 CFR Part 1942

Business and industry, Grant programs—Housing and community development, Industrial park, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1932, 7 U.S.C. 1989, and 16 U.S.C. 1005.

Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants

2. Amend § 1942.304 to revise the definition of ''rural and rural area'' and remove the definitions of ''urbanized area'' and ''urbanizing area'' to read as follows:

§ 1942.304 Definitions.

* * * * *

Rural and Rural Area. Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town according to the latest decennial census of the United States.

* * * * *

3. Amend § 1942.305 as follows: a. Revise paragraph (a);

b. Add a new paragraph (b)(3)(iv)(G). The revision and addition read as follows:

§ 1942.305 Eligibility and priority.

(a) *Eligibility.* (1) RBE grants may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include States, counties, cities, townships, and incorporated town and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations and other Federally recognized Indian Tribal groups in rural areas.

(2) The end result of the project must finance or develop a small and emerging private business enterprise. The small business receiving assistance must meet the definition contained in § 1942.304. However, if the small and emerging private business enterprise is an eligible nonprofit entity or other tax-exempt organization located in a city, town or unincorporated area with a population of 5,000 or less and has a principal office on land of an existing or former Native American reservation, the small and emerging private business

enterprise is exempt from meeting the definition contained in § 1942.304.

(3) Regional Commission Grant applicants must meet eligibility requirements of the Regional Commission and also of the Agency, in accordance with paragraph (a)(1) of this section, for the Agency to administer the Regional Commission Grant under this subpart.

(4) Television demonstration grants may be made to statewide, private, nonprofit, public television systems whose coverage is predominantly rural. An eligible applicant must be organized as a private, nonprofit, public television system, licensed by the Federal Communications Commission, and operated statewide and within a coverage area that is predominantly rural.

(b) * * *

(3) * * *

(iv) * * *

(G) The project will assist a small and emerging private business enterprise as described in § 1942.305 (a)(2) of this subpart—10 points.

* * * * *

Dated: December 13, 2002.

Thomas C. Dorr,

Under Secretary.

[FR Doc. 02–32050 Filed 12–19–02; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 559, 562, and 563

[No. 2002–64]

RIN 1550–AB55

Savings Associations—Transactions with Affiliates

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule with request for comment.

SUMMARY: The Office of Thrift Supervision (OTS) is revising its regulations on transactions with affiliates. This interim final rule conforms OTS regulations to the Board of Governors of the Federal Reserve System (FRB) final rule implementing sections 23A and 23B of the Federal Reserve Act (FRA). The FRB rule (Regulation W) combines statutory restrictions on transactions with affiliates with new and existing interpretations and exemptions.

DATES: This interim final rule is effective April 1, 2003. Comments must be received on or before February 18, 2003.

ADDRESSES: *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2002–64. Commenters should be aware that there have been unpredictable and lengthy delays in postal deliveries to the Washington, DC area in recent weeks and may prefer to make their comments via facsimile, e-mail, or hand delivery.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, No. 2002–64.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906-6518, Attention: No. 2002–64.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov*, Attention: No. 2002–64, and include your name and telephone number.

Availability of comments: OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the business day after the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Karen A. Osterloh, Special Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, or Donna Deale, Manager, (202) 906–7488, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 11(a)(1) of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1468(a)(1)) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c–1) to every savings association ''in the same manner and to the same extent'' as if the savings association were a member bank of the Federal Reserve System.

Section 23A of the FRA imposes three major limitations on a member bank's (and its subsidiaries') transactions with affiliates. First, section 23A limits the amount of ''covered transactions'' with any single affiliate to no more than 10 percent of the member bank's capital stock and surplus. Covered transactions with all affiliates are limited to no more than 20 percent of the member bank's capital stock and surplus. A covered transaction includes a loan or extension of credit to an affiliate, a purchase of or investment in securities issued by an affiliate, a purchase of assets from an affiliate, the acceptance of securities issued by an affiliate as collateral security for a loan or extension of credit to any person or company, and the issuance of a guarantee, acceptance, or letter of credit on behalf of an affiliate.

Second, section 23A requires that all covered transactions between a member bank and its affiliates be on terms and conditions that are consistent with safe and sound banking practices and prohibits a member bank from purchasing low-quality assets from an affiliate. Finally, section 23A requires that a member bank's extensions of credit to affiliates and guarantees on behalf of affiliates be appropriately secured by a statutorily defined amount of collateral.

Section 23B of the FRA protects member banks by requiring that transactions between the bank and its affiliates occur on market terms—on terms and under circumstances that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with unaffiliated companies. Section 23B applies to covered transactions under section 23A, as well as other transactions, such as the sale of securities or other assets to an affiliate and the payment of money or the furnishing of services to an affiliate. Section 23B also prohibits certain purchases and acquisitions of securities by a member bank or its subsidiary subject to certain conditions, and prohibits certain advertisements or agreements that state or suggest that the member bank is responsible for the obligations of its affiliates.

In addition to the section 23A and 23B restrictions, section 11(a)(1) of the HOLA imposes two prohibitions on savings associations. First, a savings association may not make a loan or other extension of credit to any affiliate unless that affiliate is engaged only in activities that a bank holding company may conduct. In addition, no savings association may purchase or invest in securities issued by an affiliate, other than with respect to shares of a subsidiary. Section 11(a)(4) of the HOLA authorizes OTS to impose such additional restrictions on any transaction between a savings association and any affiliate as it

determines to be necessary to protect the safety and soundness of the association.

In 1991, OTS issued comprehensive rules implementing section 11(a) of the HOLA.[1] These rules, which are currently codified at 12 CFR 563.41 and 563.42 (2002), define and clarify the application of sections 23A and 23B to savings associations and their subsidiaries, implement the two prohibitions imposed under section 11(a) of the HOLA, and impose additional restrictions and safeguards, as authorized by section 11(a)(4) of the HOLA. OTS has made only minor amendments to these rules since 1991.

The FRB has statutory authority to issue regulations to administer and carry out the purposes of sections 23A and 23B of the FRA.[2] Until recently, the FRB had promulgated no comprehensive regulations on this subject. Instead, the FRB relied on a series of regulatory interpretations and informal staff guidance.[3] The FRB recently issued Regulation W, a comprehensive final rule implementing sections 23A and 23B of the FRA.[4] Regulation W incorporates many existing FRB interpretations, supersedes certain outdated interpretations, exempts specific types of transactions, and implements revisions to sections 23A and 23B contained in the Gramm-Leach-Bliley Act (GLBA).[5]

The FRB's final rule does not by its terms apply to savings associations. However, because sections 23A and 23B apply to every savings association in the same manner and to the same extent as if the savings association were a member bank, OTS is revising its regulations on transactions with affiliates to reflect Regulation W. Today's interim final rule has three goals:

- To incorporate all applicable provisions and exceptions prescribed by the FRB in Regulation W;
- To provide guidance concerning the relationship between the additional prohibitions under section 11(a)(1) of the HOLA and Regulation W; and
- To set out the additional restrictions OTS imposes under section 11(a)(4) of the HOLA.

[1] 56 FR 34005 (July 25, 1991).

[2] 12 U.S.C. 371c(f), 371c–1(e).

[3] The FRB codified some of these interpretations at 12 CFR 250.240 through 250.250 (2002).

[4] 67 FR 76560 (Dec. 12, 2002), *to be codified* as 12 CFR part 223. In this rule, OTS cites to 12 CFR part 223 as it will be codified in the 2003 Code of Federal Regulations, rather than by citation to publication of the final rule in the **Federal Register**

[5] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

II. General Approach

OTS is replacing its existing rules on transactions with affiliates at 12 CFR 563.41 and 563.42 (2002) with a new interim final rule, which will be codified at 12 CFR 563.41. The interim final rule cross references the substantive provisions contained in Regulation W; interprets Regulation W to the extent necessary to apply these restrictions to savings associations; incorporates the prohibitions in section 11(a)(1) of the HOLA; and imposes various additional restrictions on savings associations under section 11(a)(4) of the HOLA.

OTS considered, but is not adopting, an alternative presentation. Specifically, OTS reviewed whether its rule should restate, with appropriate revisions, all of Regulation W. While this alternative presentation would consolidate in one place all regulations under section 11(a) of the HOLA, OTS believes that this approach would be duplicative. Moreover, this approach would require OTS to revise its regulations every time that the FRB amends Regulation W. The approach in this interim final rule, on the other hand, will ensure that most amendments to Regulation W are automatically incorporated in OTS rules without further notice and comment rulemaking. OTS specifically seeks public comment on which approach is more suitable.

III. Interim Final Rule—12 CFR 563.41

A. Scope

The interim final rule at § 563.41(a) sets out the scope of the new rule. Specifically, it states that § 563.41 implements section 11(a) of the HOLA, which applies sections 23A and 23B of the FRA to every savings association in the same manner and to the same extent as if the association were a member bank; prohibits certain types of transactions with affiliates; and authorizes OTS to impose additional restrictions on savings association transactions with affiliates.

The interim final rule implements only section 11(a) of the HOLA. It does not contain every statutory or regulatory restriction on transactions between savings associations and their affiliates. For example, the rule does not address additional restrictions on transactions with affiliates that OTS may require as prompt corrective action under section 38(f)(2)(B) of the Federal Deposit Insurance Act (FDIA). 12 U.S.C. 1831o(f)(2)(B).

B. Sections 23A and 23B of the FRA/Regulation W

The interim final rule at § 563.41(b) states that a savings association must comply with sections 23A and 23B of the FRA and Regulation W. To clarify Regulation W for savings associations, OTS has prepared a chart briefly explaining how specific sections of Regulation W apply and explaining why other sections do not apply to savings associations. These provisions are described below.

1. Applying Regulation W to Savings Associations

Regulation W by its terms applies only to member banks and defines this term as ''any national bank, State bank, banking association, or trust company that is a member of the Federal Reserve System. For purposes of this definition, an operating subsidiary of a member bank is treated as part of the member bank.'' 12 CFR 223.3(w). To ensure that Regulation W applies to savings associations and their subsidiaries in the same manner and to the same extent as member banks, the interim final rule at § 563.41(b)(11) states that the term ''member bank'' as used in Regulation W includes a savings association.

Like the existing rule, the interim final rule defines ''savings association'' to include federal and state-chartered savings associations and most thrift subsidiaries.[6] Savings association also includes any savings bank or cooperative bank that is a savings association under section 10(l) of the HOLA.[7] This provision reflects the agency's long-standing interpretation that a savings bank or cooperative bank that elects to be treated as a savings association for the purposes of section 10(l) of the HOLA has also made an election to be treated as a savings association for the purposes of section 11 of the HOLA.[8] Accordingly, the interim final rule continues to include within the definition of savings association those state banks and cooperative banks that are subsidiaries of section 10(l) holding companies.

[6] *See* 12 CFR 563,41(b)(5)(2002), which incorporates the definition of savings association at 12 CFR 583.21(2002). Thrift subsidiaries are discussed below.

[7] Section 10(l) of the HOLA states: ''Notwithstanding any other provision of law, a savings bank (as defined in [12 U.S.C. 1813(g)]) and a cooperative bank that is an insured bank (as defined in [12 U.S.C. 1813(H)]) upon application shall be deemed to be a savings association for the purposes of [section 10 of the HOLA], if the Director [of OTS] determines that such bank is a qualified thrift lender * * *.'' 12 U.S.C. 1467A(l).

[8] *See* section 10(d) of the HOLA. 12 U.S.C. 1467a(d).

OTS has also revised the reference to ''operating subsidiaries.'' Under Regulation W, the definition of affiliate generally excludes any company that is a subsidiary of the member bank unless the subsidiary is: (1) A depository institution; (2) a financial subsidiary;[9] (3) a company that is directly controlled by one or more affiliates (other than depository institution affiliates) or by a shareholder that controls the member bank or a group of shareholders that together control the member bank; (4) an employee stock option plan, trust, or other similar organization that exists for the benefit of the shareholders, partners, members, or employees of the member bank; or (5) any other company that the FRB or appropriate banking agency determines to be an affiliate. 12 CFR 223.2(b)(1)(i)–(v). The FRB refers to all non-affiliate subsidiaries as ''operating subsidiaries.'' 12 CFR 223.3(aa). OTS believes that this term is unnecessary and confusing given the use of the term ''operating subsidiary'' in other OTS regulations. *See* 12 CFR part 559. Accordingly, the chart at § 563.41(b) of the interim final rule does not use the term ''operating subsidiary.'' Instead, where it is appropriate to refer to a subsidiary that is not an affiliate, the chart uses the phrase ''non-affiliate subsidiary.''

2. Affiliates

Under Regulation W, the term ''affiliate'' is defined to include parent companies (any company that controls the member bank); companies under common control with the member bank; companies under other types of common control; companies with interlocking directors or trustees; companies that are sponsored and advised on a contractual basis by the member bank, its subsidiary, or an affiliate; investment companies for which a member bank or any affiliate is an investment advisor; depository institution subsidiaries of a member bank; financial subsidiaries; companies held under merchant banking or insurance company investment authority; partnerships for which the member bank or an affiliate serves as general partner; subsidiaries of affiliates; and other companies that the FRB deems to be an affiliate of the member bank. 12 CFR 223.2(a). This definition specifically excludes certain companies, including most subsidiaries of member banks. 12 CFR 223.2(b). The interim final rule adopts the FRB definition of affiliate except as described below.

[9] Financial subsidiaries are discussed in this preamble at section III.B.2.b.

a. Control

One of the fundamental concepts underlying the definition of affiliate is the concept of control. Regulation W states that control by a company or shareholder over another company means that:

- The company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has the power to vote 25 percent or more of any class of voting securities or other similar voting interest of the other company.
- The company or shareholder controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the other company.
- The Board determines, after notice and opportunity for hearing, that the company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company. 12 CFR 223.3(g)(1).

Regulation W also includes specific provisions addressing ownership or control of shares as a fiduciary, shares by a subsidiary, convertible securities, and nonvoting equity securities. *See* 12 CFR 223.3(g)(2)–(5).

When OTS promulgated its transactions with affiliates regulation in 1991, it exercised its authority under section 11(a)(4) of the HOLA to expand the definition of control. Specifically, existing § 563.41(b)(3) states that a company or shareholder has control over another company if the company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other company or if the company or shareholder would be deemed to control another company under 12 CFR 574.4(a) or presumed to control the company under 12 CFR 574.4(b). As a related matter, OTS also applied its own concept of control to define a subsidiary of a savings association. Specifically, existing § 563.41(b)(4) defines subsidiary of a savings association as a company that is controlled by a savings association within the meaning of part 574.

This interim final rule at § 563.41(b)(6) continues to use the existing OTS definition of control.[10] OTS-regulated savings associations are accustomed to applying part 574 control concepts to transactions with affiliates and in numerous other contexts. *See* definitions of control used in 12 CFR part 559 (subordinate organizations) and 12 CFR part 563b (the mutual-to-stock conversions rule). While this definition is more expansive than the FRB's definition of control, its use is consistent with section 11(a)(4) of the HOLA, which permits OTS to impose additional restrictions on savings associations' transactions with affiliates. OTS specifically requests comment on whether these control rules continue to be appropriate or whether it should conform these rules more closely to Regulation W.

[10] OTS made one minor revision to its existing definition of control. Under OTS's current transactions with affiliates rules, no company is deemed to own or control a company by virtue of its ownership or control of shares in a fiduciary capacity, except under certain circumstances. OTS has updated this provision to more closely reflect the related FRB provision at 12 CFR 223.3(g)(2).

b. Financial Subsidiaries

Regulation W defines affiliate to include a financial subsidiary of a member bank. 12 CFR 223.2(a)(8). A financial subsidiary is defined as any subsidiary of a member bank that ''engages, directly or indirectly, in any activity that national banks are not permitted to engage in directly or that is conducted on terms and conditions that differ from those that govern the conduct of such activity by national banks.'' The definition excludes a subsidiary that ''a national bank is specifically authorized to own or control by the express terms of a Federal statute * * *.'' [11]

Approximately 100 thrifts have investments in subsidiaries called service corporations that engage in activities in which a national bank may not engage directly. Regulation W did not address whether these thrift subsidiaries would be considered to be financial subsidiaries. For the reasons stated below, OTS concludes that savings association subsidiaries are not financial subsidiaries under the definition in Regulation W.

OTS believes that service corporations would fall within the exception to the definition of financial subsidiary. As noted above, Regulation W states that a financial subsidiary does not include a subsidiary that a national bank is specifically authorized by the express terms of a Federal statute to own or control. This exception is based on the definition of a financial subsidiary of a national bank at 12 U.S.C. 24a, which also expressly provides that bank service companies are not financial

[11] 12 CFR 223.3(p).

subsidiaries under the exception.[12] To apply this exception to savings associations ''in the same manner and to the same extent'' as member banks, OTS believes that it is appropriate to exclude any subsidiary that a savings association is specifically authorized by Federal statute to own or control. Since federal savings associations are specifically authorized to invest in and control service corporations under section 5(c)(4)(B) of the HOLA, service corporations would be excluded.

OTS also believes that the statutory scheme underlying GLBA strongly indicates that Congress did not contemplate that a savings association would own or control a financial subsidiary as that term is defined in section 23A of the FRA. Section 121 of GLBA added the new provisions addressing financial subsidiaries. In addition to the changes to section 23A(e) of the FRA, section 121 added extensive provisions governing financial subsidiaries of national banks [13] and parallel provisions addressing financial subsidiaries of insured state banks.[14] However, no GLBA provision explicitly referred to a financial subsidiary of a savings association and no legislative history hinted that the GLBA's new financial subsidiary provisions would have any impact on thrift subsidiaries. Moreover, while section 121 included numerous statutory revisions reconciling the new financial subsidiary provisions with existing sections of the FDIA, the FRA, the Bank Holding Company Act, and the Revised Statutes, GLBA included no similar conforming revisions to the HOLA or the Savings and Loan Holding Company Act. GLBA's failure to reconcile conflicting provisions in these two acts strongly suggests that Congress did not intend to include thrift subsidiaries as financial subsidiaries.[15]

The text of section 23A(e) of FRA provides further evidence that Congress did not intend to include thrift subsidiaries as financial subsidiaries. Section 23A(e)(1) defined financial subsidiary as any company that is ''a subsidiary of a bank that would be a financial subsidiary of a national bank under [12 U.S.C. 24a].'' Congress could have used the phrase ''a subsidiary of an insured depository institution that would be a financial subsidiary of a national bank.''[16] The use of the phrase ''subsidiary of a bank that would be a financial subsidiary of a national bank,'' however, suggests that Congress intended a limited application of this definition only to subsidiaries of national and state banks.

OTS notes that a contrary interpretation would also fail to recognize that Congress specifically and comprehensively addressed the regulation of savings associations and their subsidiaries in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).[17] In FIRREA, Congress was aware that certain subsidiaries could engage in activities that were impermissible for a parent savings association under section 5(c)(4)(B) of HOLA, and that these activities were broader than the activities allowed for national banks and their subsidiaries. As a part of that legislation, Congress enacted various provisions specifically designed to address transactions by savings associations with their subsidiaries. Many of these restrictions serve similar purposes as the restrictions on transactions with financial subsidiaries addressed by section 23A(e) of the FRA.[18]

Finally, OTS believes that its interpretation is consistent with the purposes of sections 23A and 23B of the FRA. These two provisions were designed to limit the risks to an institution (and the Federal deposit insurance funds) from transactions between the institution and its affiliates, and to limit the ability of an institution to transfer to its affiliates the subsidy arising from the institution's access to the Federal safety net.[19] OTS has addressed these risks through its comprehensive regulation of the relationship between savings associations and their subsidiaries. Under this regulatory scheme, OTS has not experienced significant problems that would warrant the application of sections 23A and 23B to these subordinate organizations. In light of this successful record, there is no demonstrable need to apply affiliate restrictions to thrift subsidiaries by classifying them as financial subsidiaries.

Accordingly, the interim final rule at § 563.41(b) states that the Regulation W references to financial subsidiaries do not apply to savings associations and their subsidiaries. These references include 12 CFR 223.2(a)(8) and (b)(1)(ii) (affiliate includes a financial subsidiary); 12 CFR 223.3(p) (definition of financial subsidiary); and 12 CFR 223.32 (rules that apply to a financial subsidiary of a member bank).

c. Companies That Are Both Subsidiaries and Affiliates

Under Regulation W, subsidiaries of a member bank are generally not affiliates unless the subsidiary is: (1) A depository institution; (2) a financial subsidiary; (3) directly controlled by one or more affiliates (other than depository institution affiliates) of the member bank, by a shareholder that controls the member bank, or by a group of shareholders that together control the member bank; (4) an employee stock option plan (ESOP), trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the member bank or its affiliates, or (5) determined by the FRB

[12] U.S.C. 24a(g)(3)(B) states that subsidiaries that a national bank may control under the Bank Service Company Act are excluded as finance subsidiaries.

[13] Section 121(a) of GLBA added 12 U.S.C. 24a, which specifically authorizes national banks to conduct activities through financial subsidiaries; regulates the activities that may be conducted by those financial subsidiaries; and imposes various restrictions on national banks that control financial subsidiaries.

[14] Section 121(d) of GLBA added section 46 to the FDIA to permit an insured state bank to control an interest in a subsidiary that engages in activities that would be permissible for a national bank to conduct through a financial subsidiary. Section 46 includes safety and soundness firewalls that generally require insured state banks to comply with the same conditions and restrictions that apply to a national bank under 12 U.S.C. 24a, including restrictions on transactions with financial subsidiaries.

[15] For example, GLBA made no conforming revisions to section 11 (a)(l)(B) of the HOLA, which prohibits thrifts from purchasing or investing in securities issued by an affiliate, other than with respect to shares of a subsidiary. Section 23A(e)(2) of the FRA specifically states that a financial subsidiary ''shall be deemed to be an affiliate of the bank'' and ''shall not be deemed to be a subsidiary of the bank.'' If a service corporation were a financial subsidiary and, thus, an affiliate and not a subsidiary, section 11 and section 23A(e)(2)—when read together—would prohibit a savings association from investing in the service corporation's securities. This would nullify a federal savings association's express authority to invest in service corporations under section 5(c)(4)(B) of the HOLA. Similar issues could be raised regarding section 11(a)(1)(A) of the HOLA, which prohibits thrifts from making any loan or extension of credit to an affiliate engaged in activities that are not permitted to bank holding companies.

[16] *Compare* 12 U.S.C. 24a(g)93) (the term ''financial subsidiary means any company that is controlled by one or more insured depository institutions * * *'').

[17] Pub. L. No. 101–73, 103 Stat. 183 (1989).

[18] For example, section 23A of the FRA restricts covered transactions with financial subsidiaries, including limits on loans, extensions of credit, and purchases of, or investments in, securities issued by affiliates. *See* 12 U.S.C. 371c(b)(7)(A) and (B), FIRREA also established prudential limits on these transactions. Section 5(t)(5) of the HOLA requires Federal and state chartered savings associations to deduct from capital all investments and extensions of credit to any subsidiary engaged in activities taht are not permissible for national banks. Other depository institutions are not subject to as extensive restrictions on their investments in subsidiaries that engage in activities that re impermissible to a national bank. By contrast, national banks must deduct equity and retained earnings in financial subsidiaries, but not debt investments. 12 U.S.C. 24a(c).

[19] 66 FR 24186 (May 11, 2000).

or appropriate federal banking agency to be an affiliate.[20]

Except for references to financial subsidiaries, the OTS interim final rule follows Regulation W. This will modify OTS's current treatment of thrift subsidiaries. In one respect, the interim final rule will add to the definition of affiliate a subsidiary that is an ESOP, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the member bank or its affiliates.

In another respect, the interim rule will delete from the OTS definition of affiliate ''any company that would be an affiliate under [12 CFR 563.41(b)(1)(2002)] but for the fact that it is a subsidiary of a savings association.''[21] By contrast, the corollary provision of Regulation W only includes as affiliates those companies that are directly controlled by one or more affiliates or by shareholders that control the institutions. The application of these two provisions leads to slightly different results. For example, a subsidiary that is sponsored and advised on a contractual basis by an affiliate of the savings association is both a subsidiary and an affiliate. Under the current OTS rule, the entity would appear to be an affiliate. Under Regulation W, the entity would be a subsidiary, but not an affiliate. While OTS may impose greater restrictions on transactions by savings associations, OTS believes that its current rule is overly broad, particularly in light of the authority discussed below which permits OTS (or the FRB) to deem any company (including a subsidiary) to be an affiliate on a case-by-case basis.

d. Companies Deemed To Be Affiliates

Section 223.2(a)(12) states that ''affiliate'' includes any company that the FRB or the appropriate federal banking agency determines by regulation or order to have a relationship with the member bank or any subsidiary or affiliate of the bank such that covered transactions by the bank with that company may be affected by the relationship to the detriment of the bank or its subsidiary.[22] OTS's existing rule at § 563.41(b)(1)(v)(A) is nearly identical to Regulation W. However, existing § 563.41(b)(1)(v)(B) adds that OTS may also deem a company to be an affiliate if it determines that the company presents a risk to the safety or soundness of the savings association. The OTS rule lists a number of factors for OTS consideration including the nature of the activities conducted by the company, the amount of transactions with the savings association or its subsidiaries, the financial condition of the company or its parent savings association, and other supervisory factors.

The interim final rule addresses OTS authority to make case-by-case determinations at § 563.41(b)(3). OTS has reworded the safety and soundness standard to more accurately reflect section 11(a)(4) of the HOLA and has deleted the list of supervisory factors as unnecessary. OTS, however, will continue to consider these and other factors when it makes its determination under the safety and soundness standard.[23]

3. Other Provisions of Regulation W

a. Capital Stock and Surplus

Regulation W's definition of the phrase ''capital stock and surplus'' uses capital terms such as Tier 1 and Tier 2 capital. By contrast, the existing OTS definition of the phrase ''capital stock and surplus'' cross-references the definition of unimpaired capital and unimpaired surplus under OTS's loans-to-one-borrower rule, which uses thrift-specific capital terms such as core and supplementary capital. To ensure that thrifts will be able to apply this definition, the interim rule continues to use the current OTS definition. For similar reasons, all citations to the Call Report will refer to the Thrift Financial Report.

b. U.S. Branches or Agencies of Foreign Banks

OTS does not regulate U.S. branches or agencies of foreign banks. Accordingly, § 563.41(b) of the interim final rule states that 12 CFR 223.61, which addresses these entities, does not apply.[24]

C. Additional Prohibitions and Restrictions under Section 11 of the HOLA

Section 11(a) of the HOLA imposes two prohibitions on savings associations in addition to those found in sections 23A and 23B of the FRA, and authorizes OTS to impose additional restrictions on a savings association's transactions with affiliates. Paragraph (c) of the interim final rule addresses these additional provisions.

1. Regulation W Definitions

The interim final rule applies Regulation W definitions to the additional section 11 prohibitions and restrictions, except as described in the chart at § 563.41(b) of the interim rule.

2. Loans and Extensions of Credit

Section 11(a)(1)(A) of the HOLA states that ''no loan or other extension of credit may be made to any affiliate unless that affiliate is engaged only in activities described at section 10(c)(2)(F)(i) of [the HOLA].'' Section 10(c)(2)(F)(i) of the HOLA refers to activities ''which the [FRB], by regulation, has determined to be permissible for bank holding companies under [12 U.S.C. 1843(c)], unless the Director, by regulation, prohibits or limits any such activities for savings and loan holding companies.''[25] Thus, under section 11(a)(1)(A), a savings association may not make a loan or other extension of credit to an affiliate engaged in non-bank holding company activities. OTS restates this restriction at § 563.41(c)(1) of the interim final rule.[26]

For the purposes of this prohibition, the current rule states that a loan or other extension of credit includes a purchase of assets from an affiliate that is subject to the affiliate's agreement to repurchase. As a result, the existing rule

[20] 12 CFR 223.2(b)(1)–(v).

[21] *See* 12 CFR 563.41(b)(2)(i)(2002).

[22] The FRB may make other determinations under Regulation W that may affect institutions regulated by OTS. For example, a savings association may request the FRB to grant an exemption from the requirements of section 23A or 23B of the FRA (12 CFR 223.43 and 223.55). The FRB generally seeks OTS concurrence before it takes an action that impacts an OTS-regulated institution. Thus, the interim final rule does not require an institution to notify OTS before it makes a request for exemption. To expedite these requests, however, OTS-regulated institutions should contact OTS when they file an exemption request.

[23] Currently, OTS may also, on a case-by-case basis, elect to treat a company that is both an affiliate and a subsidiary as a subsidiary. *See* 12 CFR 563.41(b)(2)(ii)(2002) (last phrase). OTS has never exercised this authority and not included this provision in the interim final rule.

[24] OTS has made one additional revision that affects the application of its current rule. Under section23A(c) of the FRA, each loan, extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate must be secured by collateral having a market value equal to a set percentage of the transaction. A transaction that is secured by notes, drafts, bills of exchange, or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank must be collateralized at 100 percent. 12 U.S.C. 371c(c)(10)(A)(iii). This provision requires only that the cited instruments must be eligible for purchase or reinvestment and imposes no requirement that the institution must be a member bank. The current OTS rule adds to the statutory provision by stating that collateral that is eligible for rediscount or purchase by a Federal Home Loan Bank may also be collateralized at 100 percent. 12 CFR 563.41(c)(1)(i)(C). The additional language in the current OTS rule is not necessary to ensure that savings associations have parity with member banks. Accordingly, the interim rule does not include this current language provisions.

[25] These activities include activities approved for bank holding companies by regulation at 12 CFR 225.28, or by case-by-case order of the FRB in accordance with 12 CFR 225.23 and 225.24.

[26] The chart in the interim rule at § 563.41(b)(7) also refers to this prohibition.

generally prohibits these agreements with affiliates that are engaged in non-bank holding company activities. The current rule, however, exempts certain agreements that involve United States Treasury securities and that meet specified requirements.

Section 11 of the HOLA does not define ''loan or other extension of credit,'' and does not compel a legal conclusion that purchases of assets that are subject to an affiliate's agreement to repurchase are, or are not, prohibited by statute. When it originally promulgated this provision, OTS noted that section 11(a)(1)(A) focused on prohibiting transactions with non-banking affiliates that transfer credit and other risks to the savings association. Because a purchase of assets that is subject to an agreement to repurchase generally bears many of the economic characteristics of a loan or extension of credit to such an affiliate,[27] OTS concluded that it was appropriate to treat most of these transactions as loans or extensions of credit under section 11(a)(1)(A). OTS requests comment on whether it should retain these provisions on purchases of assets that are subject to agreements to repurchase.

In addition to the rules on purchases of assets that are subject to an agreement to repurchase, OTS has issued a number of interpretations regarding the loan prohibition. These interpretations are contained in various documents including preambles to proposed and final rules, opinion letters, and other guidance. For example, OTS has considered whether a savings association is barred from extending credit to an affiliate that directly engages only in activities permissible for a bank holding company, but owns subsidiaries engaged in activities not permissible for bank holding companies, such as real estate development. OTS determined that, in the case of affiliates that are not savings associations, such activities are imputed to each parent affiliate in a vertical ownership chain up to, but not including, a controlling holding company in the corporate structure. Activities are not, however, attributed downward to subsidiaries of an affiliate.[28] Where non-bank holding company activities are attributed to an affiliate from its subsidiary, a savings association is barred from extending credit to that affiliate. While this guidance reflects OTS's existing position, OTS has not incorporated its interpretations on the attribution of activities in the interim final rule. OTS specifically requests comment on whether it should include this guidance in the final rule.

OTS has also considered whether a third party attribution rule applies to the loan prohibition. Sections 23A(a)(2) and 23B(a)(3) of the FRA require a member bank (and thus savings associations) to treat any transaction with any person as a transaction with an affiliate to the extent that the proceeds are used for the benefit of, or transferred to, an affiliate. Regulation W includes this third party attribution rule at 12 CFR 223.16 and 223.52(b). By contrast, section 11(a)(1)(A) of the HOLA does not include a third party attribution rule, and OTS has declined to infer such a rule for the purposes of section 11. As a result, OTS's existing rules implementing section 11(a)(1)(A) do not prohibit a loan or extension of credit to a non-affiliate where the proceeds are used for the benefit of, or transferred to, an affiliate that engages in non-bank holding company activities.[29] The interim final rule includes a similar provision. Several OTS legal opinions, however, indicate that the agency may, nonetheless, attribute such a loan to an affiliate if the loan is not bona fide or is not of independent substance, or there is evidence that the loan was a prearranged step in a series of transactions designed to channel funds to an affiliate to which the institution could not lend directly.[30] OTS requests comment on whether it should include this additional guidance in the final rule.

3. Purchases or Investments in Securities Issued by an Affiliate

Section 11(a)(1)(B) provides that ''no savings association may enter into any transaction described in section 23A(b)(7)(B) of [the FRA] with any affiliate other than with respect to shares of a subsidiary.'' Section 23A(b)(7)(B) of the FRA describes ''a purchase of or investment in securities issued by [an] affiliate.''

Section 563.41(c)(2) of the interim final rule restates this restriction.[31] To ensure that a savings association may make investments in a bank or savings association that is a subordinate organization, the interim final rule also continues to state that the term subsidiary includes a bank and a savings association for the purposes of this provision. OTS has issued a number of legal opinions interpreting this prohibition and is considering including these interpretations in the rule. OTS specifically requests comment on whether it should include these or other interpretations of section 11(a)(1)(B) of the HOLA in the final rule.[32]

4. Recordkeeping

Currently §§ 563.41(e) and 563.42(e) require a savings association to make and retain records that reflect in reasonable detail all transactions between a savings association (and its subsidiaries) and affiliates, and transactions with an unaffiliated party that are attributed to an affiliate under the third party attribution rule. The current rule also includes minimum recordkeeping requirements at § 563.41(e)(1)(i) through (vii). OTS imposed these recordkeeping requirements under its authority at section 11(a)(4) of the HOLA, which permits OTS to impose additional restrictions to protect the safety and soundness of savings associations. The interim final rule retains these requirements at § 563.41(c)(3).

5. Notice

Under the existing rules, OTS may require certain savings associations to notify it at least 30 days before the savings association or its subsidiary conducts a transaction with an affiliate. These associations include a savings association that commenced *de novo* operations within the past two years, an association that was the subject (or whose holding company was the subject) of an approved application or notice under the control regulations at 12 CFR part 574 within the past two years, an association with a composite CAMELS rating of ''4'' or ''5,'' an association that does not meet all regulatory capital requirements, an association that has entered into a

[27] The savings association transfers funds to the affiliate, expecting to be repaid when the company repurchases the assets. The purchased assets essentially amount to collateral, since the savings association is required to return the assets at the time of repurchase. The principal risk to the savings association, its depositors and the depot insurance fund is credit risk—the possibility that the affiliate will default on its obligation to make the repurchase. These types of agreements are generally considered the functional equivalent of a loan or extension of credit. *See* amendments to Federal Financial Institutions Examination Council Policy Statement on Repurchase Agreements of Depository Institutions with Securities Dealers and Others, 63 FR 6935 (February 11, 1998).

[28] 56 FR 34405, at 34009.

[29] *See* 12 CFR 563.41(a)(2)(2002).

[30] Op. OTS Chief Counsel (Dec. 22, 1991) and Op. OTS Chief Counsel (March 13, 1992).

[31] The chart in the interim rule at § 563.41(b)(8) also refers to this prohibition.

[32] *See* Op. Acting Chief Counsel (Sept. 9, 1993) (Purchases of mortgage-backed securities that are guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae from an affiliate are not subject to the section 11(a)(1)(B) prohibition) and Op. Acting Chief Counsel (June 30, 1993) (Purchases of securities, including mutual funds, issued by an affiliate, are not prohibited if the purchase is made on a riskless principal or agency basis).

consent to merge or a supervisory agreement or has been the subject of a cease and desist order within the past two years, an association that is the subject of a formal enforcement proceeding, a problem association, and an association that is in a troubled condition.

OTS restates these requirements with minor revisions at paragraph (c)(4) of the interim final rule. OTS has clarified that ''troubled condition'' is defined at 12 CFR 563.555. OTS has also deleted specific references to problem institutions, institutions that have a composite rating of 4 or 5 under CAMELS, and institutions that are subject to a cease and desist order. These institutions will either fall within the definition of troubled condition, or one of the other listed categories.

IV. Solicitation of Comments Regarding the Use of Plain Language

Section 722 of the GLBA [33] requires federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. OTS invites comments on how to make this rule easier to understand. For example:

(1) Have we organized the material to suit your needs? If not, how could the material be better organized?

(2) Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?

(3) Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

(4) Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

V. Issuance of an Interim final rule

Section 553 of the Administrative Procedure Act (APA) permits an agency to issue a rule without prior notice and public comment if the agency, for good cause, finds that notice and comment is impractical, unnecessary, or contrary to the public interest, and explains its finding when it publishes the final rule. 5 U.S.C. 553(b)(B).

Among the purposes of this interim final rule are updating existing OTS rules to reflect FRB's newly issued Regulation W, interpreting Regulation W to the extent necessary to apply it to savings associations, providing guidance concerning the relationship between the prohibitions imposed by section 11(a)(1) of the HOLA and Regulation W, and clearly setting out additional restrictions imposed by OTS under section 11(a)(4) of the HOLA. OTS's existing regulations at 12 CFR 563.41 and 563.42 contain provisions that conflict with final Regulation W and do not reflect updated interpretations contained in Regulation W. As a result, the continued retention of these rules following the effective date of Regulation W is likely to cause undue confusion concerning applicable restrictions on transactions with affiliates. OTS has already received numerous inquiries on these matters. Having an interim final rule in place will help to minimize this confusion and ensure a smoother transition for savings associations as OTS implements Regulation W. OTS therefore believes that prior notice and public comment on this interim final rule is impractical, unnecessary, and contrary to the public interest.

VI. Effective Date and Transition Rule

The FRB made Regulation W effective April 1, 2003. Accordingly, transactions entered into on or after April 1, 2003, will be immediately subject to Regulation W. Transactions entered into after the date of publication of Regulation W in the **Federal Register**, but before April 1, 2003, will become subject to Regulation W on April 1, 2003.

The FRB included a limited transition rule for transactions consummated on or before the publication date of Regulation W. Under this transition rule, if such a transaction would become subject to section 23A or 23B (or the treatment of the transaction would change) solely as a result of Regulation W, the transaction will not become subject to Regulation W until July 1, 2003. A transaction is subject to section 23A or 23B solely as a result of Regulation W, if the transaction is subject to section 23A or 23B under Regulation W, but was not subject to section 23A or 23B under the terms of the statute or any written interpretation of the statute by the FRB or its staff dated before publication of Regulation W. Similarly, a transaction's treatment under section 23A or section 23B changes solely as a result of Regulation W if the treatment of the transaction under Regulation W differs from the treatment of the transaction under the terms of sections 23A and 23B or any written interpretation of the statute by the FRB or its staff dated before publication of Regulation W.

There are two exceptions to the FRB transition rule. First, a transaction that otherwise qualifies for the transition period will immediately become subject to Regulation W if it is renewed, extended, or materially altered on or after April 1, 2003. Second, a purchase of assets that was consummated on or before the publication of Regulation W and that qualifies for the transaction rule, is not subject to the new requirements in Regulation W.

To relieve regulatory burden, the FRB also permits member banks to apply specified provisions before Regulation W's effective date. Member banks may apply the following rules beginning on the date of publication of Regulation W: (1) Section 223.16(c)(4) (general purpose credit card exemption); (2) § 223.24(a), (b), and (c) (valuation principles applicable to extensions of credit secured by affiliate securities); (3) § 223.31(d) (exemption for step transactions involving the acquisition of an affiliate that becomes a non-affiliate subsidiary after the acquisition); (4) § 223.41(d) (exemption for internal corporate reorganization transactions); and (5) § 223.42(c), (f), (g), (i), (j), and (k) (exemptions for transactions secured by cash or U.S. government securities, purchases of certain marketable securities, purchases of municipal securities, asset purchases by a newly formed institution, transactions approved under the Bank Merger Act, and purchases of extensions of credit from an affiliate).

In today's interim final rule, OTS has established the same effective date, will apply identical transition rules, and will permit savings associations to apply the specified sections of Regulation W before the effective date of the rule. OTS, however, requests comment on whether the appropriate dates for these periods should be based on the date of publication of this interim rule, rather than the date of publication of Regulation W.

VII. Executive Order 12866

The Director of OTS has determined that this rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

VIII. Regulatory Flexibility Act Analysis

An initial regulatory flexibility analysis under the Regulatory

Flexibility Act (RFA) is required when an agency must publish a general notice of proposed rulemaking. 5 U.S.C. 603. As noted above, OTS has determined that it is not necessary to publish a notice of proposed rulemaking for this interim final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis.

Nonetheless, OTS has considered the likely impacts of this rule on small businesses and believes that the rule

[33] 12 U.S.C. 4809.

will not have a significant impact on a substantial number of small entities. OTS has had comprehensive regulations implementing section 11 of the HOLA since 1991. Today's interim final rule updates these provisions to incorporate Regulation W, interprets Regulation W to the extent necessary to apply the FRB rule to savings associations, clarifies the relationship between section 11(a)(1) of the HOLA and Regulation W, and sets out the additional restrictions imposed under section 11(a)(4) of the HOLA. In light of existing § 563.41, OTS does not believe that the interim final rule will significantly increase the applicable burdens for small or large savings associations. Accordingly, a regulatory flexibility analysis is not required.

IX. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, OTS has determined that a notice of proposed rulemaking is not required. Accordingly, OTS has concluded that the Unfunded Mandates Act does not require an analysis of this interim final rule.

Moreover, OTS has determined that the interim final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. OTS has had comprehensive regulations implementing section 11 of the HOLA since 1991. Today's interim final rule merely updates these provisions to incorporate Regulation W, interprets Regulation W to the extent necessary to apply the FRB rule to savings associations, interprets Regulation W to the extent necessary to apply the FRB rule to savings associations, clarifies the relationship between section 11(a)(1) of the HOLA and Regulation W, and sets out the additional restrictions imposed under section 11(a)(4) of the HOLA. In light of existing § § 563.41, OTS does not believe that the interim final rule will significantly increase the applicable burdens for savings associations and will not result in increased expenditures by these institutions. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

X. Paperwork Reduction Act of 1995

The information collection requirements in the existing OTS rules at 12 CFR 563.41(e) and 563.42(e) were previously approved under OMB control number 1550–0078. The interim final rule incorporates these requirements at § 563.41(c)(3) and (4), and does not make any substantive changes that affect the overall burden of compliance.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 562

Accounting, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations to read as follows:

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Amend § 506.1(b) by adding an entry for § 563.41(c)(3) and(4), and by removing the entries for § 563.41(e) and § 563.42(e) to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described.	Current OMB control No.
* * * * *	
563.41(c)(3) and (4)	1550–0078
* * * * *	

PART 559—SUBORDINATE ORGANIZATIONS

3. The authority citation for part 559 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

4. Amend § 559.3 by revising paragraph (l) to read as follows:

§ 559.3 What are the characteristics of, and what requirements apply to, subordinate organizations of Federal savings associations?

* * * * *

	Operating subsidiary	Service corporation
* *	* * *	* *
(l) How do the transactions with affiliates (TWA) regulations (§ 563.41 of this chapter apply?	(1) Section (2) Section 563.41 of this chapter explains how TWA applies. Generally, an operating subsidiary is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. An operating subsidiary's transactions with affiliates are aggregated with those of the thrift	(2) Section (2) Section 563.41 of this chapter explains how TWA applies. Generally, a service corporation is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organziaiton that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. If a savings association directly or indirectly controls a service corporation, the service corporation's transactions with affiliates are aggregated with those of the thrift.
* *	* * *	* *

PART 562—REGULATORY REPORTING STANDARDS

5. The authority citation for part 562 continues to read as follows:

Authority: 12 U.S.C. 1463.

§ 562.4 [Amended]

6. Amend § 562.4(a) and (e) by removing ''12 CFR 563.41(b)(1)'' and adding in lieu thereof ''12 CFR 563.41.''

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

7. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 42 U.S.C. 4106.

8. Revise § 563.41 to read as follows:

§ 563.41 Transactions with affiliates.

(a) *Scope.* (1) This section implements section 11(a) of the Home Owners' Loan Act (12 U.S.C. 1468(a)). Section 11(a) applies sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c-1) to every savings association in the same manner and to the same extent as if the association were a member bank; prohibits certain types of transactions with affiliates; and authorizes OTS to impose additional restrictions on a savings association's transactions with affiliates.

(2) For the purposes of this section, ''savings association'' defined at section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and also includes any savings bank or any cooperative bank that is a savings association under 12 U.S.C. 1467a(l). A non-affiliate subsidiary of a savings association as described in paragraph (b)(12) of this section is treated as part of the savings association.

(b) *Sections 23A and 23B of the FRA/Regulation W.* A savings association must comply with sections 23A and 23B of the Federal Reserve Act and the Federal Reserve Board (FRB) implementing regulation at 12 CFR part 223 (Regulation W), except as described in the following chart:

Provision of Regulation W	Application
(1) 12 CFR 223.1—Authority, purpose, and scope	Does not apply. Section 563.41(a) addresses these matters.
(2) 12 CFR 223.2(a)(8)—''Affiliate'' includes a financial subsidiary	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(3) 12 CFR 223.2(a)(12)—Board or appropriate Federal banking agency determination that ''affiliate'' includes other types of companies.	Shall be read to include the following statement: ''Affiliate also includes any company that OTS determines, by order or regulation, to present a risk to the safety and soundness of the savings association.''
(4) 12 CFR 223.2(b)(1)(ii)—''Affiliate'' includes a subsidiary that is a financial subsidiary.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(5) 12 CFR 223.3(d)—Definition of ''capital stock and surplus''	Does not apply. Capital stock and surplus means ''unimpaired capital and unimpaired surplus,'' as defined in 12 CFR 560.93(b)(11).
(6) 12 CFR 223.3(g)—Definition of ''control''	Does not apply. (i) ''Control'' by a company or shareholder over another company means that the company or shareholder: (A) Directly or indirectly, or acting through one or more other persons owns, controls or has the power to vote 25 percent or more of any class of voting securities of the other company; (B) Is deemed to control the company under 12 CFR 574.4(a); or (C) Is presumed to control the company under 12 CFR 574.4(b) and control has not been rebutted. (ii) Notwithstanding any other provision of this rule, no company owns or controls another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in 12 CFR 223.2(a)(3) or if the company owning or controlling the shares is a business trust.
(7) 12 CFR 223.3(h)(1)—Section 23A covered transactions include an extension of credit to the affiliate.	Shall be read to incorporate § 563.41(c)(1), which prohibits loans extensions of credit to an affiliate, unless the affiliate, is engaged in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2–2 of this chapter.
(8) 12 CFR 223.3(h)(2)—Section 23A covered transactions include a purchase of or investment in securities issued by an affiliate.	Shall be read to incorporate § 563.41(c)(2), which prohibits purchases and investments in securities issued by an affiliate, other than with respect to shares of a subsidiary.
(9) 12 CFR 223.3(k)—Definition of ''depository institution''	Shall be read to include the following statement: ''For the purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the depository institution.''
(10) 12 CFR 223.3(p)—Definition of ''financial subsidiary''	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(11) 12 CFR 223.3(w)—Definition of ''member bank''	Shall be read to include the following statement: ''Member bank also includes a savings association. For purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the savings association.''
(12) 12 CFR 223.3(aa)—Definition of ''operating subsidiary''	Does not apply. Other OTS regulations include a conflicting definition of this same term. Instead, OTS uses the phrase ''non-affiliate subsidiary.'' A non-affiliate subsidiary is a subsidiary of a savings association other than a subsidiary described at 12 CFR 223.2(b)(1) (i), (iii) through (v).
(13) 12 CFR 223.3(ii)—Definition of ''subsidiary''	Shall be read to include the following statement: ''However, a subsidiary of a savings association means a company that is controlled by the savings association within the meaning of part 574 of this chapter.''
(14) 12 CFR 223.31—Application of section 23A to an acquisition of an affiliate that becomes an operating subsidiary.	Shall be read to refer to ''operating subsidiary'' instead of ''a non-affiliate subsidiary.''
(15) 12 CFR 223.32—Rules that apply to financial subsidiaries of a bank.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.

Provision of Regulation W	Application
(16) 12 CFR 223.42(f)(2)—Exemption for purchasing certain marketable securities.	Shall be read to refer to ''Thrift Financial Report'' instead of ''Call Report.''
(17) 12 CFR 223.42(g)(2)—Exemption for purchasing municipal securities.	Shall be read to refer to ''Thrift Financial Report'' instead of ''Call Report.''
(18) 12 CFR 223.61—Application of sections 23A and 23B to U.S. branches and agencies of foreign banks.	Does not apply. OTS does not regulate U.S. branches and agencies of foreign banks.

(c) *Additional prohibitions and restrictions.* A savings association must comply with the additional prohibitions and restrictions in this paragraph. Except as described in paragraph (b) of this section, the definitions in 12 CFR part 223 apply to these additional prohibitions and restrictions.

(1) *Loans and extensions of credit.* (i) A savings association may not make a loan or other extension of credit to an affiliate, unless the affiliate is solely engaged in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2–2 of this chapter. This paragraph (c)(1) does not prohibit a loan or extension of credit to a non-affiliate, merely because proceeds of the transaction are used for the benefit of, or transferred to, an affiliate.

(ii) For the purposes of this paragraph (c)(1), a loan or other extension of credit includes a purchase of assets from an affiliate that is subject to the affiliate's agreement to repurchase the assets. Such a purchase is not a loan or extension of credit, however, if the purchase is a transaction or series of transactions meeting all of the following requirements:

(A) The savings association purchases United States Treasury securities from the affiliate, the affiliate agrees to repurchase the securities at the end of a stated term, the remaining term of the securities purchased by the savings association exceeds the term of the affiliate's repurchase agreement, and the savings association has possession or control of the securities and the right to dispose of the securities at any time during the term of the agreement and upon default.

(B) The affiliate purchases United States Treasury securities from the savings association and the savings association agrees to repurchase the securities at the end of a stated term.

(C) The aggregate amount of the affiliate's outstanding obligations to repurchase securities from the savings association under the repurchase obligation described at paragraph (c)(1)(ii)(A) of this section, at all times, is less than the aggregate amount of the savings association's outstanding obligations to repurchase securities from the affiliate under paragraph (c)(1)(ii)(B) of this section.

(2) *Purchases or investments in securities.* A savings association may not purchase or invest in securities issued by any affiliate other than with respect to shares of a subsidiary. For the purposes of this paragraph (c)(2), subsidiary includes a bank and a savings association.

(3) *Recordkeeping.* A savings association must make and retain records that reflect, in reasonable detail, all transactions between the savings association and its affiliates and any other person to the extent that the proceeds of a transaction are used for the benefit of, or transferred to, an affiliate. At a minimum, these records must:

(i) Identify the affiliate;

(ii) Specify the dollar amount of the transaction and demonstrate that this amount is within the quantitative limits in 12 CFR 223.11 and 223.12, or that the transaction is not subject to those limits;

(iii) Indicate whether the transaction involves a low-quality asset;

(iv) Identify the type and amount of any collateral involved in the transaction and demonstrate that this collateral meets the requirements in 12 CFR 223.14 or that the transaction is not subject to those requirements;

(v) Demonstrate that the transaction complies with 12 CFR part 223, subpart F or that the transaction is not subject to those requirements;

(vi) Demonstrate that all loans and extensions of credit to affiliates comply with paragraph (c)(1) of this section; and

(vii) Be readily accessible for examination and supervisory purposes.

(4) *Notice requirement.* (i) OTS may require a savings association to notify the agency before the savings association may engage in a transaction with an affiliate or a subsidiary (other than exempt transactions under 12 CFR part 223). OTS may impose this requirement if:

(A) The savings association is in troubled condition as defined at § 563.555 of this part;

(B) The savings association does not meet its regulatory capital requirements;

(C) The savings association commenced *de novo* operations within the past two years;

(D) OTS approved an application or notice under 12 CFR part 574 involving the savings association or its holding company within the past two years;

(E) The savings association entered into a consent to merge or a supervisory agreement within the past two years; or

(F) OTS or another banking agency initiated a formal enforcement proceeding against the savings association and the proceeding is pending.

(ii) OTS must notify the savings association in writing that it has imposed the notice requirement and must identify the circumstance listed in paragraph (c)(4)(i) of this section that supports the imposition of the notice requirement.

(iii) If OTS has imposed the notice requirement under this paragraph, a savings association must provide a written notice to OTS at least 30 days before the savings association may enter into a transaction with an affiliate or a subsidiary. The written notice must include a full description of the transaction. If OTS does not object during the 30-day period, the savings association may proceed with the proposed transaction.

§ 563.42 [Removed]

9. Remove § 563.42.

10. Amend § 563.43 by revising paragraph (d) to read as follows:

§ 563.43 Loans by savings associations to their executive officers, directors, and principal shareholders.

* * * * *

(d) The term subsidiary includes a savings association that is controlled within the meaning of § 563.41(b)(6) of this part by a company (including for this purpose an insured depository institution) that is a savings and loan holding company. When used to refer to a subsidiary of a savings association, the term subsidiary means a ''subsidiary'' as that term is defined at § 563.41(b)(13) of this part.

* * * * *

Dated: December 12, 2002.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 02–31782 Filed 12–19–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

RIN 1076–AE31

Housing Improvement Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; technical amendments.

SUMMARY: This document contains technical amendments to the Housing Improvement Program final regulations that were published in the **Federal Register** on March 2, 1998. These regulations define the terms and conditions under which assistance is given to Indians under the Housing Improvement Program. These amendments revise terminology to make the rule consistent. They also add several clarifications.

DATES: The amendments are effective December 20, 2002.

FOR FURTHER INFORMATION CONTACT: June Henkel, Chief, Division of Housing Assistance, Bureau of Indian Affairs, 1849 C Street NW., MS–4660–MIB, Washington, DC 20240; Telephone (202) 208–3667.

SUPPLEMENTARY INFORMATION: The final regulations in 25 CFR part 256 contain several technical errors. The errors include incorrect cross-references, incorrect terminology, omission of clarifying cross-references and terminology, and omission of grid lines in tables. None of these corrections will affect the substance of any provision in 25 CFR part 256. For example, we are deleting ''house'' and replacing it with ''dwelling'' for consistency with other parts of the rule; we are deleting the word ''improvements'' and replacing it with the word ''renovation'', which is the same term used in the description of Category B assistance (the term ''improvements'' more typically refers to cosmetic work, such as the addition of a deck, *etc.*); and we are replacing ''building code standards'' with ''standard housing condition'' to clarify that the assistance provided under the program is made one-time, not piece-meal, and is to bring the entire dwelling to ''standard'' at the time of the one-time assistance.

Reasons for Publishing a Final Rule

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply to this rule. As allowed by 5 U.S.C. 553(b)(B), we find that public comment on the revisions made by this rule is unnecessary and contrary to the public interest. Because the changes made by this rule clarify requirements of the Housing Improvement program and because they do not make substantive changes to the provisions of the program, public comment is unnecessary. Since clearer requirements will make it easier for applicants to obtain assistance, delaying implementation by publishing a proposed rule is contrary to the public interest.

The Department further concludes that this rule should be effective immediately because it relieves possible restrictions on the efficient and necessary distribution of HIP funds to qualified applicants. Delaying the effective date of this rule would deny the public the benefit of clearer and less burdensome requirements that make it easier to apply for benefits under the program. For these reasons, this rule meets the requirements of 5 U.S.C. 553(d)(3) and can therefore become effective immediately upon publication.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, of State, local, or tribal governments or communities. This program is a small, individual Indian program and has minimal effect on tribes; the budget is far less than $100 million and therefore does not have a significant effect on the economy.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule is meant to cover the poorest of the poor who have no other resources for assistance; it is not inconsistent with nor does it interfere with any other agency actions.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or rights or obligations of their recipients. Because it is the aid of last resort, it does not affect other entitlements, grants, loans, or change the rights of recipients.

(4) This rule does not raise novel legal or policy issues. This program has been functioning for a number of years with no significant changes in policy.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Indian tribes are not considered small entities; the small amount of funding received from the program is used to improve the condition of individuals and families.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804 (2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The program is much smaller than $100 million and does not affect the economy; it provides funds for the provision of repairs and renovation assistance to individuals and families living in substandard housing conditions.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The program has limited funds which are spread throughout Indian country and thus causes no significant impacts.

(c) Does not have significant adverse effect on competition, employment, investments, productivity, innovation, or the ability of the U.S. based enterprises to compete with foreign-based enterprises. This program operates only within the U.S. and therefore does not compete with any foreign-based enterprises.

Unfunded Mandates Act

This rule does not impose an unfunded mandate on State, local, or tribal government or the private sector. Tribes decide whether they have the capability to perform the activities required to provide housing assistance to eligible applicants residing within their approved tribal service area, and is in compliance with the provisions of the UnfundedMandates Act of 1995.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. The program provides services to improve existing housing or to provide replacement or new housing. The program does not have an adverse effect on tribes, tribal members or individualIndians or families. A takings implication assessment is not required.

Federalism (Executive Order 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The federal government provides program services to individuals at their request; or funds to tribes under Pub. L. 93–638 contracts or annual funding agreements for the provision of services to individuals and families. A Federalism Assessment is not required.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

This rule requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. An OMB form 83-I was been reviewed by the department and sent to OMB for approval. The OMB Control Number assigned is 1076–0084 with an expiration date of October 31, 2004. These minor changes to the rule do not affect the information collection. We will not sponsor or collect, and a person need not respond to, a request for information if the valid OMB Control Number is not displayed. Comments concerning this collection may be directed to the BIA Information Collection Clearance Officer, 1849 C Street NW., MailStop 4613 MIB, Washington, DC 20240.

National Environment Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM we have evaluated the potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. These technical amendments only serve to correct and clarify the existing rule.

Consultation and Coordination With Indian Tribal Governments

In accordance with the President's Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249), we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. The number of eligible applicants and their associated housing need costs far exceeds the amount of funding available for this program; there are no potential effects on federally recognized tribes, only eligible applicants as funds are made available starting with the neediest of the needy in each region until the available funds are exhausted.

List of Subjects in 25 CFR Part 256

Housing—home improvement, Indians—housing.

Dated: October 8, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

Accordingly, 25 CFR part 256 is amended as set forth below.

PART 256—HOUSING IMPROVEMENT PROGRAM

1. The authority citation for part 256 continues to read as follows:

Authority: 25 U.S.C. 13

2. Make the following amendments to § 256.2:

A. Remove the definition of *Area Director.*

B. Add in alphabetical order the following definition:

Regional Director means the officer in charge of a Bureau of Indian Affairs regional office or his/her authorized delegate.

C. Remove the definition of the term ''Bureau'' and add in its place the following definition:

BIA means the Bureau of Indian Affairs in the Department of the Interior.

3. Revise § 256.5 to read as follows:

§ 256.5 What is the Housing Improvement Program?

The Housing Improvement Program is a safety-net program that provides grants for the cost of services to repair, renovate, replace, or provide housing. The program provides grants to the neediest of the needy Indian families who:

(a) Live in substandard housing or are without housing; and

(b) Have no other resource for assistance.

§ 256.7 What housing services are available under the Housing Improvement Program?

4. In § 256.7, revise the table to read as follows:

* * * * *

Type of assistance	What it provides	Where to find information
Category A	Up to $2,500 in safety or sanitation repairs to the dwelling in which you live, which will remain substandard. Can be provided more than once, but for not more than one dwelling and the total assistance cannot exceed $2,500.	§ 256.8
Category B	Up to $35,000 in repairs and renovation, which will bring your dwelling to Standard Housing condition, as defined in § 256.2. Can only be provided once.	§ 256.9
Category C	A modest dwelling that meets the criteria in § 256.11; and the definition of Standard Housing in § 256.2; and whose costs are determined by and limited to the criteria in 256.17(b). can only be provided once.	§ 256.10 & § 256.11.

5. In § 256.8 (b), remove the word ''house'' and add, in its place, ''dwelling''.

6. In § 256.9:

A. Remove the word ''house'' wherever it appears, and add, in its place, ''dwelling''.

B. In paragraph (b), after the word ''must,'' add the words ''occupy the dwelling and must''.

C. In paragraph (c), remove the word ''improvements'' and add, in its place, ''renovation''; and remove the words ''make the house meet applicable building code standards'' and add in

their place, ''bring the dwelling to standard housing condition.''

D. In paragraph (d) after the word ''repairs'' add the words ''and renovation''.

E. In paragraph (d)(2), after the word ''repairs'' add the words ''and renovation''.

7. In § 256.10, revise the table in paragraph (a) to read as follows:

§ 256.10 When do I qualify for category C assistance?

(a) * * *

You qualify for Category C assistance if * * *	And * * *	And * * *
You own the dwelling in which you are living.	The dwelling cannot be brought up to applicable building code standards and to standard housing condition for $35,000 or less.	
You lease the dwelling in which you are living.	Your leasehold is undivided and for not less than 25 years at the time that you receive assitance.	The dwelling cannot be brought up to applicable building code standards and to standard housing condition for $35,000 or less.
You do not own a dwelling	You own land that is suitable for housing	The land has adequate ingress and egress rights and economical access to utilities.
You do not own a dwelling	You have a leasehold on land that is suitable for housing and the leasehold is undivided and for not less than 25 years at the time you receive assistance.	The land has adequate ingress and egress rights and economical access to utilities.

* * * * *

8. In § 256.10:

A. Remove the word ''house'' wherever it appears and add in its place the word ''dwelling.''

B. In paragraph (b), add the word ''grant'' after the word ''written.''

9. Revise § 256.11 and the section heading to read as follows:

§ 256.11 What are the occupancy and square footage standards for a dwelling provided with Category C assistance?

A modest dwelling provided with Category C assistance will meet the standards in the following table.

Number of occupants	Number of bedrooms	Total dwelling square footage [1] (maximum)
1–3	[2] 2	900
4–6	[2] 3	1050
7 or more	[2] 4	[3] 1350

[1] Total living space; does not include hallways or modest-sized bathrooms or closets.

[2] Determined by the servicing housing office, based on composition of family.

[3] Adequate for all but the very largest families.

10. In § 256.13:

A. In paragraph (a), remove the words ''and a Privacy Act Statement''.

B. In paragraph (b), remove the words ''and a Privacy Act Statement''.

C. In paragraph (c), in the first sentence, remove the words ''application and signed Privacy Act Statement'' and add, in their place, ''and signed application''.

D. In paragraph (g)(1), remove the word ''patent''.

11. In § 256.14:

A. In paragraph (a), in the last sentence, remove the word ''complete'' and add, in its place, ''return''; and remove the word ''eligible'' and add, in its place, ''considered''.

B. In paragraph (b)(2), revise the table to read as follows:

(b) * * *

(2) * * *

Factor	Ranking factor and definition	Randing description	Point descriptors
1	Annual Household Income: Must include income of all persons counted in Factors 2, 3, 4. Income includes earned income, royalties, and one-time income.	Income/125% FPG [1] (% of 125% FPC) [1]	Points (maximum=40):
		0–25	40
		26–50	30
		51–75	20
		76–100	10
		101–125	0
2	Aged Persons: For the benefit of persons age 55 or older, and Must be living in the dwelling.	Years of Age:	Points:
		Less than 55	0
		55 and older	1 point per year of age over 54
3	Disabled Individual: Any one (1) disabled person living in the dwelling. (The percentage of disability must be based on the average (mean) of the percentage of disabilities identified from two sources (A+B) of statements of conditions which may include a physician's certification, Social Security or Veterans Affairs determination, or similar determination).	% of Disability—(A% + B%/2):	Points (Maximum=20):
		100%	20
		or	
		Less than 100%	10
4	Dependent Children: Must be under the age of 18 or such other age established for purposes of parental support by tribal or state law (if any). Must live in the dwelling and not be married.	Dependent Child—(Number of Children):	Points (Maximum = 5):

Factor	Ranking factor and definition	Randing description	Point descriptors
		1	0
		2	1
		3	2
		4	3
		5	4
		6 or more	5

[1] FPG means Federal Poverty Guidelines.

* * * * *

C. In paragraph (e), in the second sentence, remove the word ''area'' and add, in its place, ''regional''.

12. In § 256.15, revise the section heading to read as follows:

§ 256.15 How long will I have to wait for repair, renovation, or replacement of my dwelling?

13. In § 256.17:

A. Remove the words ''improvements or repairs'' wherever they appear and add, in their place, ''repairs or renovation''.

B. In paragraph (c), in the last sentence, remove the word ''home'' and add, in its place, ''dwelling''.

C. In paragraph (d), remove the words ''improvement, repair'' and add, in their place, ''repairs, renovation''.

D. In paragraph (d)(1), in the second sentence, remove the citation ''§ 256.7'' and add, in its place, ''§ 256.11''.

14. In § 256.19, remove the words ''improvements, repairs'' and add, in their place, the words ''repairs, renovation''.

15. In § 256.23, revise the section heading to read as follows:

§ 256.23 How will I be advised that the repair, renovation or replacement of my dwelling has been completed?

16. Remove § 256.24.

17. Redesignate §§ 256.25 through 256.29 as follows:

Old section	New section
256.25	256.24
256.26	256.25
256.27	256.26
256.28	256.27
256.29	256.28

[FR Doc. 02–31985 Filed 12–19–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–486; Re: Notice No. 948]

RIN 1512–AC71

Capay Valley Viticultural Area (99R–449P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision establishes the Capay Valley viticultural area in northwest Yolo County, California. The Capay Valley viticultural area covers approximately 150 square miles or about 102,400 acres. Approximately 25 acres are currently planted to wine grapes.

EFFECTIVE DATE: February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Kristy Colón, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR part 9, American Viticultural Areas.

What Is the Definition of an American Viticultural Area?

Section 4.25(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, and topography distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Section 4.25a(e)(2), title 27 CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. *The petition must include:*

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States GeologicalSurvey (U.S.G.S.) maps of the largest applicable scale; and
- A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Rulemaking Proceeding

Capay Valley Petition

ATF received a petition from Tom Frederick and Pam Welch of Capay Valley Vineyards proposing to establish the ''Capay Valley'' viticultural area in northwestern Yolo County, California. The valley has several wine grape growers, including one who recently received awards for his wines. This viticultural area covers approximately 150 square miles, or about 102,400 acres. Approximately 25 acres are currently planted to wine grapes.

Notice of Proposed Rulemaking

ATF published a notice of proposed rulemaking regarding the Capay Valley viticultural area in the July 25, 2002, **Federal Register** as Notice No. 948 (67 FR 48597). In that notice, ATF requested comments by September 23, 2002, from all interested persons concerning the establishment of this viticultural area. ATF received no comments in response to Notice No. 948.

What Name Evidence Has Been Provided?

The petitioners submitted as evidence an excerpt from the book ''Capay Valley: The Land & The People,'' by Ada Merhoff. The excerpt states that the name ''Capay Valley'' was used in the late 1840s to identify the area when Pio Pico, governor of the territory of Alta California, granted nine square leagues of land called the Rancho Canada de Capay to three Berryessa brothers. The book also contains a copy of an 1857 map of the valley, titled ''Map of the Rancho Canada De Capay.'' A copy of a map titled ''Property Owners 1858 Canada de Capay Grant'' on page 6 of the book shows further subdivisions as lands were sold.

In addition, Merhoff's book mentions the Adobe Ranch, a 19th century Capay Valley ranch owned by John Gillig, which also contained a vineyard and winery. Merhoff references other works that also mention Gillig's ranch. ''The Western Shore Gazeteer & Commercial Directory for the State of California—Yolo County'' by C.P. Sprague and H.W. Atwell states that, in 1869, the Capay Valley Winery at Gillig's ranch processed grapes from his and several other small vineyards in the vicinity, yielding 30,000 gallons of wine in both red and white varieties. Frank T. Gilbert's ''The Illustrated Atlas and History of Yolo County,'' published in 1879, notes that Gillig's vineyard was ''awarded the premium in 1861 for having the finest vineyard in the state.'' Merhoff's book also states that the word ''Capay'' comes from the Wintun Indian's word ''capi'', which means ''stream'' in their Native American language.

What Boundary Evidence Has Been Provided?

The ''Capay Valley'' viticultural area is located in northwest Yolo County, California, and borders Napa, Lake, and Colusa Counties. The boundaries of the viticultural area follow the natural physical boundaries of the valley, which are formed by the Blue Ridge Mountains to the west and the Capay Hills to the east. Additionally, Cache Creek runs the entire length of the valley. These boundaries also coincide with those of the Capay Valley General Plan, which is a subset of the Yolo County General Plan.

In addition to the required U.S.G.S. map, the petitioner provided a set of maps of Yolo County compiled in 1970 as part of a soil survey by the United States Department of Agriculture's Soil Conservation Service and the University of California Agricultural Experiment Station. These maps show in further detail the boundaries of the viticultural area.

What Evidence Relating to Geographical Features Has Been Provided?

Soils

The petitioners assert that the soils of the Capay Valley viticultural area range from Yolo-Brentwood, which is a well-drained, nearly level, silty clay loam on alluvial fans, to Dibble-Millsholm, which is a well drained, steep to very steep loam to silty clay loam over sandstone.

Some areas have clay soils with creek rock and debris intermixed. Volcanic ash is also found in some areas, primarily in the rolling hills in the center of the valley. The petitioners contend that these clay soils intermixed with creek rock and volcanic ash, add a distinctive viticultural aspect to the area.

The petitioners state that one of the major soil differences between Capay Valley and the adjacent Central Valley area is the abundance of calcareous soils. This supply of calcium makes the clay soils of the Capay Valley less binding and allows grapevine roots to penetrate through the soils more easily. Water usage is therefore less than would be expected given the warm climatic conditions. The calcium-magnesium ratio in the soils is easier to manage because it is easier to add magnesium than calcium.

Elevation

The petitioners note that the elevation of the Capay Valley viticultural area ranges from 100 meters on the valley floor, to 750 meters at the top of the Blue Ridge, and 550 meters at the top of the Capay Hills.

Climate

The petitioners characterize the climate of the viticultural area as one with hot, dry summers and a long growing season. Portions of the valley receive moderating breezes from the Sacramento Delta and San Francisco Bay. Fog creeps over the tops of the Blue Ridge during heavy fog periods in the bay, but the valley is shielded from the ground fog that is pervasive in the Sacramento Valley. Winters are moderate and late spring frosts are occasional enough to negate the need for active frost protection.

Also, the petitioners state that Capay Valley is warmer than Napa Valley to the west. This warmer climate enables the Capay Valley to avoid the frost problems that are common in Napa, offers an earlier growing season, typically 3 to 4 weeks, and reduces the need for as many sulfur sprays throughout the growing season.

Additionally, the petitioners note, the area differs from its Central Valley neighbors to the east in that, while they share a warmer climate, Capay Valley's bud-break is typically 1–2 weeks later.

Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

This regulation will not have a significant economic impact on a substantial number of small entities. No new requirements are proposed. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area. The approval of this viticultural area petition merely allows wineries to more accurately describe the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area. Accordingly, a regulatory flexibility analysis is not required.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Kristy Colón, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Alcohol and alcoholic

beverages, Consumer protection, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Subpart C is amended by adding § 9.176 to read as follows:

§ 9.176 Capay Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Capay Valley''.

(b) *Approved Maps.* The appropriate map for determining the boundary of the Capay Valley viticultural area is the United States Geological Survey (U.S.G.S.) topographic map titled: 30X60 Minute Quadrangle (Healdsburg, California 1972) (Scale: 1:100,000).

(c) *Boundaries.* The Capay Valley viticultural area is located in Yolo County, California. The beginning point is the junction of the Yolo, Napa, and Lake County lines.

(1) From the beginning point, proceed north then east along the Yolo-Lake County line;

(2) At the junction of the Yolo, Lake, and Colusa County lines, continue east along the Yolo-Colusa County line to its junction with the boundary between ranges R4W and R3W;

(3) Then south along the R4W and R3W boundary to its junction with the 250 meter contour line;

(4) Proceed generally southeast along the meandering 250 meter contour line to its junction with the T10N–T11N section line;

(5) Continue east along the T10N–T11N section line to the unnamed north-south secondary highway known locally as County Road 85;

(6) Then south along County Road 85, crossing Cache Creek, to its intersection with State Highway 16;

(7) Proceed east on Highway 16 to its junction with the unnamed north-south light duty road known locally as County Road 85B;

(8) Then south on County Road 85B to its junction with the unnamed east-west light duty road known locally as County Road 23;

(9) Proceed west on County Road 23 for approximately 500 feet to an unnamed light duty road known locally as County Road 85;

(10) Proceed south on County Road 85 until the road ends and continue south in a straight line to the T9N–T10N section line;

(11) Then west on the T9N–T10N section line to the Napa-Yolo County line;

(12) Continue northwest following the Napa-Yolo county line and return to the starting point.

Dated: October 24, 2002.

Bradley A. Buckles,

Director.

Approved: November 14, 2002.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 02–31940 Filed 12–19–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–02–097]

RIN 2115–AA97

Safety Zone; James River, Newport News, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the USS RONALD REAGAN, moored at Newport News Shipbuilding south side Pier 2. This action is intended to restrict vessel traffic on the James River within a 1000-foot radius of the vessel. The safety zone is necessary to protect mariners from the hazards associated with catapult testing being conducted on the USS RONALD REAGAN.

DATES: This rule is effective from 6 a.m. on December 16, 2002 to 8 p.m. on December 22, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–02–097 and are available for inspection or copying at USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia, 23510 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Monica Acosta, project officer, USCG Marine Safety Office Hampton Roads, at (757) 668–5590.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and making this regulation effective less than 30 days after publication in the **Federal Register**. Because of the danger posed by the catapult testing, a limited access area is necessary to provide for the safety of mariners. For the safety concerns noted, it is in the public interest to have these regulations in effect during the testing.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing the USS RONALD REAGAN, moored at Newport News Shipbuilding south side Pier 2 while conducting catapult dead load testing. The safety zone will restrict vessel traffic on a portion of the James River, within a 1000-foot radius of the USS RONALD REAGAN. The safety zone is necessary to protect mariners from the hazards associated with the catapult testing. The safety zone will be effective from 6 a.m. on December 16, 2002 to 8 p.m. on December 22, 2002. Entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representative. Public notifications will be made prior to the testing via marine information broadcasts.

Discussion of Rule

The Coast Guard is establishing a safety zone within a 1000-foot radius of the USS RONALD REAGAN, moored at Newport News Shipbuilding south side Pier 2. The temporary regulations will be enforced from 6 a.m. December 16, 2002 through 8 p.m. December 22, 2002, and will restrict general navigation in the safety zone during the testing. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This temporary final rule will affect a limited area for less than one week during daylight hours only. Advance

notification via marine information broadcasts will enable mariners to plan their transit to avoid the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in that vicinity of the James River from 6 a.m. to 8 p.m. on December 16, 2002 through December 22, 2002.

The effect of this rule will not be significant because of its limited duration and the extensive advance notifications that will be made to the maritime community via Local Broadcast Notices to Mariners and marine information broadcasts so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This is a safety zone one week in duration.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. From 6 a.m. on December 16, 2002, to 8 p.m. on December 22, 2002, add a temporary § 165.T05–097 to read as follows:

§ 165.T05–097 Safety Zone; James River, Newport News, Virginia

(a) *Location.* The following area is a safety zone: all waters of the James River within 1000 feet of the USS RONALD REAGAN, moored at Newport News Shipbuilding south side Pier 2.

(b) *Captain of the Port.* Captain of the Port means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in § 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first request authorization from the Captain of the Port. The Captain of the

Port's representative enforcing the safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (757) 668–5555.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by marine information broadcast on VHF marine band radio, channel 22 (157.1 MHz).

(d) *Enforcement period.* This section will be enforced from 6 a.m. to 8 p.m. on December 16, 2002 through December 22, 2002.

Dated: December 16, 2002.

L. M. Brooks,

Captain, Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 02–32141 Filed 12–19–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MS 23–1—200242(a); FRL–7424–3]

Approval and Promulgation of Implementation Plans for Mississippi: Infectious Waste Incinerator Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the Mississippi State Implementation Plan (SIP) modifying infectious waste incineration requirements to reflect current Emissions Guidelines approved in the State for existing hospital/medical/infectious waste incinerator units (HMIWIs).

DATES: This direct final rule is effective February 18, 2003 without further notice, unless EPA receives adverse comment by January 21, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Michele Notarianni, (404) 562–9031, *notarianni.michele@epa.gov*)

Mississippi Department of Environmental Quality, Air Division, PO Box 10385, Jackson, Mississippi 39289–0385. ((601) 961–5171).

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at address listed above or 404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Today's Action

The EPA is approving revisions to rule APC–S–1 to reflect current requirements for existing HMIWIs as detailed in the Mississippi HMIWI State Plan. The State of Mississippi submitted both the Plan and these SIP revisions on May 5, 1999. In a separate notice, EPA approved the Mississippi HMIWI State Plan (65 FR 18252, April 7, 2000). The State Plan controls air emissions from existing HMIWIs in Mississippi, except for those HMIWIs located in Indian Country.

The associated SIP revisions to rule APC-S–1 correct a section reference in Paragraph 8, ''Incineration,'' of Section 3, ''Specific Criteria for Sources of Particulate Matter,'' and change provisions listed in Paragraph 4, ''Additional Requirements for Infectious Waste Incineration,'' of Section 6, ''New Sources,'' to be consistent with the Mississippi HMIWI State Plan.

II. Final Action

The EPA is approving into the Mississippi SIP revisions to rule APC–S–1 because they are consistent with the requirements of the Clean Air Act and EPA policy.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 18, 2003 without further notice unless the Agency receives adverse comments by January 21, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 18, 2003 and no further action will be taken on the proposed rule.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 2, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart Z—Mississippi

2. In § 52.1270(c) the table is amended under subchapter APC–S–1 by revising the entries ''Section 3'' and ''Section 6'' to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSISSIPPI REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
APC-S–1	Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants			
*	*	*	*	*
Section 3	Specific Criteria for Sources of Particulate Matter.	05/28/99	12/20/02 [Insert FR page citation].	
*	*	*	*	*
Section 6	New Sources	05/28/99	12/20/02 [Insert FR page citation].	Subsection 2 Other Limitations and Subsection 3 NSPS have not been Federally approved.
*	*	*	*	*

* * * * *

[FR Doc. 02–31977 Filed 12–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7425–6]

RIN 2060–AG12

Protection of Stratospheric Ozone: Notice 17 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This notice of acceptability expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. The substitutes are for use in the following sectors: refrigeration and air conditioning, solvents cleaning, fire suppression and explosion protection, and aerosols.

EFFECTIVE DATE: December 20, 2002.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, 1301 Constitution Avenue, NW.; U.S. Environmental Protection Agency, Mail Code 6102T; Washington, DC, 20460. The docket reading room is located at the address above in room B102 in the basement. Reading room telephone: (202) 566–1744, facsimile: (202) 566–1749 Air docket staff telephone: (202) 566–1742 and facsimile: (202) 566–1741 You may inspect the docket between 8:30 a.m. and 4:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard by telephone at (202) 564–9163, by fax at (202) 565–2155, by e-mail at *sheppard.margaret@epa.gov*, or by mail at U.S. Environmental Protection

Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to 501 3rd Street, NW., Washington, DC 20001.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/* including the SNAP portion at *http://www.epa.gov/ozone/snap/*.

SUPPLEMENTARY INFORMATION:

I. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the following industrial sectors: refrigeration and air conditioning, solvent cleaning, fire suppression and explosion protection, and aerosols. For copies of the full list of SNAP decisions in all industrial sectors, visit EPA's Ozone Depletion web site at *http://www.epa.gov/ozone/snap/lists/index.html*.

The sections below discuss the substitute listing in detail. Appendix A contains a table summarizing today's listing decisions. The statements in the ''Further Information'' column in the table provide additional information, but are not legally binding under section 612 of the Clean Air Act. In addition, the ''further information'' may not be a comprehensive list of other legal obligations you may need to meet when using the substitute. Although you are not required to follow recommendations in the ''further information'' column of the table to use a substitute, EPA strongly encourages you to apply the information when using these substitutes. In many instances, the information simply refers to standard operating practices in existing industry and/or building-code standards. Thus, many of these statements, if adopted, would not require significant changes to existing operating practices.

Submissions to EPA for the use of the substitutes listed in this document may be found under category VI–D of EPA air docket A–91–42 at the address described above under **ADDRESSES**. You can find other materials supporting the decisions in this action under category IX–B of EPA docket A–91–42.

A. Refrigeration and Air Conditioning

1. and 2. R–404A and R–507A

EPA's decision: R–404A and R–507A are acceptable for use in new and retrofit equipment as substitutes for HCFC–22 and HCFC blends including, but not limited to, R–401A, R–401B, R–402A, R–402B, R–406A, R–408A, R–409A, R–411A, R–411B, R–411C, R–414A, R–414B, and R–416A in:

- Retail food refrigeration
- Cold storage warehouses
- Commercial ice machines
- Refrigerated transport
- Ice skating rinks
- Water coolers
- Residential dehumidifiers
- Vending machines
- Industrial process air conditioning
- Reciprocating chillers
- Screw chillers
- Centrifugal chillers
- Industrial process refrigeration
- Very low temperature refrigeration
- Non-mechanical heat transfer systems
- Household refrigerators and freezers
- Household and light commercial air conditioning

R–404A is a blend of 44% by weight HFC–125 (pentafluoroethane), 52% by weight HFC–143a (1,1,1-trifluoroethane) and 4% by weight HFC–134a (1,1,1,2-tetrafluoroethane). You may find the submission under EPA Air Docket A–91–42, items VI–D–284 and VI–D–287. R–507A, also known as R–507, is a blend of 50% by weight HFC–125 (pentafluoroethane) and 50% by weight HFC–143a (1,1,1-trifluoroethane).

EPA previously listed both R–404A and R–507A as acceptable alternatives for various CFCs (*e.g.*, R–12) and CFC-containing blends (*e.g.*, R–500 and R–502) in several applications in the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044) and in subsequent SNAP Notices (August 26, 1994, 59 FR 44240; January 13, 1995, 60 FR 3318). EPA previously listed R–404A and R–507A as acceptable substitutes for HCFC–22 in various end uses (March 22, 2002, 67 FR 13272 for R–404A; September 5, 1996, 61 FR 47012 for R–507A). Since that time, many users have switched directly from CFCs to R–404A or R–507A, while others have switched to HCFC–22 or many different HCFC blends found acceptable under various SNAP rulemakings and notices. Today's decision finds it acceptable to switch from HCFC–22 and HCFC blends to R–404A or R–507A in the end uses listed above.

Environmental Information

The ozone depletion potential (ODP) of R–404A and of R–507A is zero. The Global Warming Potentials (GWP) of HFC–125, HFC–143a and HFC–134a are 3400, 4300 and 1300, respectively (relative to carbon dioxide, using a 100-year time horizon).

All components of these blends have been exempted from listing as a volatile organic compound (VOC) under Clean Air Act regulations concerning the development of state implementation plans (SIPs) at 40 CFR 51.100(s).

Flammability Information

While HFC–143a is moderately flammable, the blends are not flammable.

Toxicity and Exposure Data

All components of the blend have workplace environmental exposure limits (WEELs) of 1000 ppm established by the American Industrial Hygiene Association (AIHA). EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. We also expect that users of R–404A and R–507A will adhere to the AIHA's WEELs.

Comparison to Other Refrigerants

R–404A and R–507A are not ozone depleting; thus, they reduce risk from ozone depletion compared to HCFC–22, the ODS they replace, and blends containing HCFCs. Flammability and toxicity risks are low, as discussed above. Thus, we find that R–404A and R–507A are acceptable because they reduce overall risk to public health and the environment in the end uses listed.

3. RS–24

EPA's decision: RS–24 is acceptable for use in new and retrofit equipment as a substitute for CFC–12 in the following end uses:

- Industrial process refrigeration
- Industrial process air conditioning
- Ice skating rinks
- Cold storage warehouses
- Refrigerated transport
- Retail food refrigeration
- Vending machines
- Water coolers
- Commercial ice machines
- Household refrigerators and freezers
- Residential dehumidifiers

RS–24 is acceptable, subject to use conditions, for use in new and retrofit

equipment as a substitute for CFC–12 in the following end use:

- Motor vehicle air conditioning

Conditions for Use in Motor Vehicle Air Conditioning Systems

Regulations regarding recycling and prohibiting venting issued under section 609 of the Clean Air Act apply to this blend (subpart B of 40 CFR part 82).

On October 16, 1996, (61 FR 54029), EPA promulgated a final rule that prospectively applied certain conditions on the use of any refrigerant used as a substitute for CFC–12 in motor vehicle air conditioning systems (Appendix D of subpart G of 40 CFR part 82). That rule provided that EPA would list new refrigerants in future notices of acceptability. Therefore, the use of RS–24 as a CFC–12 substitute in motor vehicle air conditioning systems must follow the standard conditions imposed on previous refrigerants, including:

- The use of unique fittings designed by the refrigerant manufacturer,
- The application of a detailed label,
- The removal of the original refrigerant prior to charging with RS–24, and
- The installation of a high-pressure compressor cutoff switch on systems equipped with pressure relief devices.

The October 16, 1996, rule gives full details on these use conditions.

You must use the following fittings to use RS–24 in motor vehicle air conditioning systems:

Fitting type	Diameter (inches)	Thread pitch (threads/inch)	Thread direction
Low-side service port		quick-connect	
High-side service port		quick-connect	
Large containers (>20 lb.)		quick-connect	
Small cans		quick-connect	

The quick-connect fittings have been reviewed and found to be sufficiently different from HFC–134a and FRIGC FR–12 quick-connect fittings to be considered unique. The labels will have a gold background and black text.

The submitter of RS–24 claims that the composition of this HFC blend is confidential business information. You can find a version of the submission with information claimed confidential by the submitter removed in EPA Air Docket A–91–42, item VI-D–281.

Environmental Information

The ozone depletion potential (ODP) of RS–24 is zero. The Global Warming Potentials (GWPs) of the constituents are between zero and approximately 4000 (relative to carbon dioxide, using a 100-year time horizon).

At least one component of this blend has not been exempted from listing as a VOC under Clean Air Act regulations concerning the development of SIPs at 40 CFR 51.100(s).

Flammability Information

While at least one component of the blend is moderately flammable, the blend is not flammable.

Toxicity and Exposure Data

Components of the blend have workplace guidance level exposure limits on the order of 500 to 1000 ppm. EPA believes this exposure limit will be protective of human health and safety. EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry.

Comparison to Other Refrigerants

RS–24 is not an ozone depleter; thus, it reduces risk from ozone depletion compared to CFC–12, the ODS it replaces. RS–24 has a comparable or lower GWP than the other substitutes for CFC–12. Flammability and toxicity risks are low, as discussed above. Thus, we find that RS–24 is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

4. NU–22

EPA's decision: NU–22 [R–125/134a/600 (46.6/50.0/3.4)] is acceptable for use in new and retrofit equipment as a substitute for R–502 in:

- Industrial process refrigeration
- Industrial process air-conditioning
- Cold storage warehouses
- Refrigerated transport
- Retail food refrigeration
- Commercial ice machines
- Vending machines
- Water coolers
- Ice skating rinks

NU–22 is a blend of 46.6 percent HFC–125, 50.0 percent HFC–134a, and 3.4 percent n-butane.

You can find the most recent submission in EPA Air Docket A–91–42, item VI-D–286.

In SNAP Notice of Acceptability #16 (March 22, 2002; 67 FR 13272), EPA noted that the composition of NU–22 was changed to match that of ISCEON 59, and that EPA previously found ISCEON 59 acceptable as a substitute for R–22 in a number of end uses in SNAP Notice of Acceptability #11 (December 6, 1999; 64 FR 68039).

Environmental Information

For environmental information on HFC–125 and HFC–134a, see above in section I.A.1 for R–404A. The ozone depletion potential (ODP) of NU–22 is zero. The Global Warming Potential (GWP) of butane is less than 10 (relative to carbon dioxide, using a 100-year time horizon). Butane is a VOC under Clean Air Act regulations concerning the development of SIPs at 40 CFR 51.100(s).

Flammability Information

While butane, one component of the blend, is flammable, the blend is not flammable.

Toxicity and Exposure Data

HFC–125 and HFC–134a have guidance level WEELs of 1000 ppm established by the AIHA. Butane has a threshold limit value (TLV) of 800 ppm established by the American Conference of Goverment Industrial Hygienists (ACGIH). EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. We also expect that users of NU–22 will adhere to the AIHA's WEELs and the ACGIH's TLVs.

Comparison to Other Refrigerants

NU–22 is not an ozone depleter; thus, it reduces risk from ozone depletion compared to R–502, the ODS it replaces. NU–22 has a comparable or lower GWP than the other substitutes for R–502. Flammability and toxicity risks are low, as discussed above. Thus, we find that NU–22 is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

5. R–407C

EPA's decision: R–407C is acceptable for use in new and retrofit equipment as a substitute for HCFC–22 and HCFC blends including, but not limited to, R–401A, R–401B, R–402A, R–402B, R–406A, R–408A, R–409A, R–411A, R–411B, R–411C, R–414A, R–414B, and R–416A in:

- Retail food refrigeration
- Cold storage warehouses
- Commercial ice machines
- Refrigerated transport
- Ice skating rinks
- Water coolers
- Residential dehumidifiers
- Vending machines
- Industrial process air conditioning
- Reciprocating chillers
- Screw chillers
- Centrifugal chillers
- Industrial process refrigeration
- Very low temperature refrigeration
- Non-mechanical heat transfer systems
- Household refrigerators and freezers
- Household and light commercial air conditioning

R–407C is a blend of 23% by weight HFC–32 (difluoromethane), 25% by weight HFC–125 (pentafluoroethane) and 52% by weight HFC–134a (1,1,1,2-tetrafluoroethane).

EPA previously listed R–407C as an acceptable alternative for HCFC–22 and CFCs in various end uses under SNAP (February 8, 1996; 61 FR 4736). Since that time, many users have switched to R–407C, while others have switched to many different HCFC blends found acceptable under various SNAP rulemakings and notices. Today's decision finds it acceptable to switch from HCFC blends to R–407C.

Environmental Information

The ozone depletion potential (ODP) of R–407C is zero. The Global Warming Potentials (GWP) of HFC–125, HFC–32 and HFC–134a are 3400, 880, and 1300, respectively (relative to carbon dioxide, using a 100-year time horizon).

HFC–32 is the only component of this blend that is a VOC under Clean Air Act regulations.

Flammability Information

While HFC–32 is moderately flammable, the blend is not flammable.

Toxicity and Exposure Data

All components of the blend have workplace environmental exposure limits (WEELs) of 1000 ppm established by the American Industrial Hygiene Association (AIHA). EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. We also expect that users of R–407C will adhere to the AIHA's WEELs.

Comparison to Other Refrigerants

R–407C is not an ozone depleter; thus, it reduces risk from ozone depletion compared to HCFC–22, the ODS it replaces, and blends containing HCFCs. R–407C has a comparable or lower GWP than the other substitutes for HCFC–22. Flammability and toxicity risks are low, as discussed above. Thus, we find that R–407C is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

6. R–410A

EPA's decision: R–410A is acceptable for use in new equipment as a substitute for HCFC blends including, but not limited to, R–401A, R–401B, R–402A, R–402B, R–406A, R–408A, R–409A, R–411A, R–411B, R–411C, R–414A, R–414B, and R–416A in:

- Retail food refrigeration
- Cold storage warehouses
- Commercial ice machines
- Refrigerated transport
- Ice skating rinks
- Water coolers
- Residential dehumidifiers
- Vending machines
- Industrial process air conditioning
- Reciprocating chillers
- Screw chillers
- Centrifugal chillers
- Industrial process refrigeration
- Very low temperature refrigeration
- Non-mechanical heat transfer systems
- Household refrigerators and freezers
- Household and light commercial air conditioning

R–410A is a blend of 50% by weight HFC–32 (difluoromethane) and 50% by weight HFC–125 (pentafluoroethane).

EPA previously listed R–410A as an acceptable alternative for HCFC–22 and CFCs in various end uses under SNAP (February 8, 1996; 61 FR 4736). Since that time, many users have switched to R–410A, while others have switched to many different HCFC blends found acceptable under various SNAP rulemakings and notices. Today's decision finds it acceptable to switch from HCFC blends to R–410A.

Environmental Information

The ozone depletion potential (ODP) of R–410A is zero. For environmental information about HFC–125, *see* section I.A.1 above for R-404A; for environmental information about HFC–32, *see* section I.A.5 above for R–407C.

Flammability Information

While HFC–32 is moderately flammable, the blend is not flammable.

Toxicity and Exposure Data

For toxicity and exposure data on HFC–125 and HFC–32, see section I.A.5 above for R–407C. We expect that users of R–410A will adhere to the AIHA's WEELs.

Comparison to Other Refrigerants

R–410A is not an ozone depleter; thus, it reduces risk from ozone depletion compared to HCFC–22, the ODS it replaces, and blends containing HCFCs. Flammability and toxicity risks are low, as discussed above. Thus, we find that R–410A is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

7. R–414B

EPA's decision: R–414B [R–22/124/600a/142b (50/39/1.5/9.5)] is acceptable for use in new and retrofit equipment as a substitute for CFC–12 and CFC–114 in:

- Industrial process air conditioning

R–414B, sold under the trade name Hot Shot, is a blend of 50% by weight HCFC–22 (chlorodifluoromethane), 39% by weight HCFC–124 (2-chloro-1,1,1,2-tetrafluoroethane), 1.5% by weight R–600a (isobutane) and 9.5% by weight HCFC–142b (1-chloro-1,1-difluoroethane). You may find the submission under EPA Air Docket A–91–42, item VI–D–289.

EPA previously listed R–414B as an acceptable alternative for CFC–12 and R–500 in several end-uses under SNAP (September 5, 1996; 61 FR 47012) and found it acceptable subject to use conditions as a CFC–12 alternative in motor vehicle air conditioners (October 16, 1996; 61 FR 54029). Today's decision extends this decision to an additional end-use.

Environmental Information

The ozone depletion potentials (ODPs) of HCFC–22, HCFC–124 and HCFC–142b are 0.055, 0.022 and 0.065, respectively. The global warming potentials (GWPs) are 1700, 620 and 2400, respectively (relative to carbon dioxide, using a 100-year time horizon).

Isobutane is under Clean Air Act regulations concerning the development of SIPs at 40 CFR 51.100(s).

Flammability Information

While HCFC–142b and isobutane are flammable, the blend is not flammable.

Toxicity and Exposure Data

HCFC–22, HCFC–124 and HCFC–142b have workplace environmental exposure

limits (WEELs) established by the American Industrial Hygiene Association (AIHA) or threshold limit value (TLV) established by the American Conference of Goverment Industrial Hygienists (ACGIH) of 1000 ppm. Isobutane has a recommended exposure limit (REL) of 800 ppm established by the National Institute for Occupational Safety and Health (NIOSH). EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. We also expect that users of R–414B will adhere to all recommended exposure limits.

Comparison to Other Refrigerants

R–414B has a much lower ozone-depletion potential than CFC–12 and CFC–114, the ODSs it replaces; thus, it reduces risk from ozone depletion. R–414B has a comparable or lower GWP than the other substitutes for CFC–12 and CFC–114 in the end-use listed. Flammability and toxicity risks are low, as discussed above. Thus, we find that R–414B is acceptable because it reduces overall risk to public health and the environment in the end use listed.

B. Solvent Cleaning

1. HCFC–225ca/cb

EPA's Decision: HCFC–225ca and HCFC–225cb are acceptable for use as a substitute for CFC–113 and methyl chloroform in the metals cleaning end use.

HCFC–225ca is also called 3,3-dichloro-1,1,1,2,2-pentafluoropropane. HCFC–225cb is also called 1,3-dichloro-1,1,2,2,3-pentafluoropropane. They are sold in a commercial blend of 45% of the ca isomer and 55% of the cb isomer (''HCFCca/cb'').

EPA has previously found HCFC–225ca/cb acceptable subject to use conditions for use in solvents cleaning in the precision cleaning and electronics cleaning end uses (June 13, 1995, 60 FR 31092) and acceptable for use in aerosol solvents (April 28, 1999, 64 FR 22981).

Environmental Information

HCFC–225ca and HCFC–225cb have ozone depletion potentials (ODPs), respectively, of 0.025 and 0.033. HCFC–225ca and HCFC–225cb have global warming potentials (GWPs) of 180 and 620, respectively, over a 100-year time horizon. HCFC–225ca has an atmospheric lifetime (ALT) of 2.1 years and HCFC–225cb has an ALT of 6.2 years.

HCFC–225ca, HCFC–225cb, and the commercial blend of HCFC–225ca/cb have been exempted from listing as volatile organic compounds (VOCs) under Clean Air Act regulations concerning the development of state implementation plans at 40 CFR 51.100(s).

Flammability

HCFC–225ca, HCFC–225cb, and the commercial blend of HCFC–225ca/cb are non-flammable.

Toxicity and Exposure Data

The manufacturer's recommended exposure guidelines over an eight-hour time-weighted average are 50 ppm for HCFC–225ca, 400 ppm for HCFC–225cb, and 100 ppm for the commercial mixture of HCFC–225ca/cb. EPA initially established a use condition for HCFC–225ca/cb in the precision cleaning and electronics cleaning end uses and did not issue an acceptability determination for the metal cleaning end use because of earlier data indicating the exposure guideline for the commercial mixture should be only 50 ppm. More recent analysis of the toxicological data indicate that a higher exposure guideline is appropriate (SNAP Notice #16, March 22, 2002, 67 FR 13272). EPA expects users of HCFC–225ca/cb to follow all recommendations specified in the manufacturer's Material Safety Data Sheets (MSDSs).

Comparison to Other Cleaning Solvents

HCFC–225ca and HCFC–225cb have ODPs of 0.025 and 0.033, respectively; thus, they reduce risk overall compared to CFC–113 and methyl chloroform, the ODSs they replace. HCFC–225ca and HCFC–225cb have comparable or lower GWP than some acceptable substitutes for CFC–113 and methyl chloroform. HCFC–225ca and HCFC–225cb are non-flammable. HCFC–225ca and HCFC–225cb are VOC-exempt. Thus, we find that HCFC–225ca, HCFC–225cb, and the commercial blend of HCFC–225ca/cb are acceptable because they reduce overall risk to public health and the environment in the end use listed.

C. Fire Suppression and Explosion Protection

1. C6-perfluoroketone

EPA's decision: C6-perfluoroketone is acceptable as a substitute for halon 1301 in the total flooding end use for both normally occupied and unoccupied spaces.

C6-perfluoroketone is comprised of a perfluoroalkyl ketone (1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-3-pentanone). It is marketed under the trade name Novec-1230. Other names include FK–5–1–12mmy2, perfluoro-2-methyl-3-pentanone, and L–15566. You can find a version of the submission with information claimed confidential by the submitter removed in EPA Air Docket A–91–42, items VI–D–269 and VI–D–277. Additional information on this fire suppressant is available in EPA Air Docket A–2002–08.

Environmental Information

C6-perfluoroketone has no ozone-depletion potential, a global warming potential of six to 100 relative to CO_2 over a 100 year time horizon, and an atmospheric lifetime of less than three days.

Flammability

C6-perfluoroketone is non-flammable.

Toxicity and Exposure Data

The C6-perfluoroketone was assayed for its ability to induce cardiac sensitization in the beagle dog (Huntington 2001). In that study, the cardiotoxic NOAEL was determined to be 10 percent. The manufacturer's maximum design concentration of 6.44 percent is significantly below the cardiotoxic NOAEL.

Appropriate protective measures should be taken and proper training administered for the manufacture, clean-up and disposal of this product and for the installation and maintenance of the total flooding systems using this product. EPA recommends the following for establishments installing and maintaining total flooding systems using this agent:

- Install and use adequate ventilation;
- Clean up all spills immediately in accordance with good industrial hygiene practices;
- Provide training for safe handling procedures to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent; and
- Provide safety features such as pre-discharge alarms, time delays, and system abort switches, as directed by applicable OSHA regulations and NFPA standards. EPA recommends that unnecessary exposure to fire suppression agents and their decomposition products be avoided and that personnel exposure be limited to no more than 5 minutes.

Use of this agent should conform with relevant Occupational Safety and Health Administration (OSHA) requirements, including 29 CFR 1910, subpart L, sections 1910.160 and 1910.162. EPA expects that users will follow the safety guidelines in the NFPA 2001 standard for clean agent fire extinguishing systems and the guidelines in the manufacturer's MSDSs.

Comparison to Other Fire Suppressants

EPA has reviewed the potential environmental impacts of this substitute and has concluded that, by comparison to halon 1301 and other acceptable substitutes, C6-perfluoroketone significantly reduces overall risk to the environment. With no ozone-depletion potential, a global warming potential value of less than 100, and an atmospheric lifetime of less than three days, C6-perfluoroketone provides an improvement over use of halon 1301, hydrochlorofluorocarbons (HCFCs) and hydrofluorocarbons (HFCs) in fire protection. We find that C6-perfluoroketone is acceptable because it reduces overall risk to public health and the environment in the end use listed.

D. Aerosols

1. HCFC–225ca/cb

EPA's Decision: HCFC–225ca and HCFC–225cb are acceptable for use as a substitute for HCFC–141b in the aerosol solvent end use.

For further information on HCFC–225ca and HCFC–225cb, *see* section B., Solvent Cleaning, above.

Comparison to Other Aerosol Solvents

HCFC–225ca and HCFC–225cb have ODPs of 0.025 and 0.033, while HCFC–141b has an ODP of 0.11; thus, HCFC–225ca and –225cb reduce risk overall compared to HCFC–141b, the ODS they replace. HCFC–225ca and HCFC–225cb have GWPs of 180 and 620, respectively, which are comparable or lower than the GWP of HCFC–141b (700) and the GWPs of some acceptable substitutes for HCFC–141b. HCFC–225ca and HCFC–225cb are non-flammable. They are less toxic than some other acceptable substitutes for HCFC–141b. HCFC–225ca and –225cb are VOC-exempt and are not hazardous air pollutants, unlike many alternatives in this end use. Therefore, we find that HCFC–225ca, HCFC–225cb, and the commercial blend of HCFC–225ca/cb are acceptable because they reduce overall risk to public health and the environment in the end use listed.

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. We refer to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, it must publish the revised lists within an additional six months.
- 90-day Notification—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.
- Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the final rulemaking (59 FR 13044) which described the process for administering the SNAP program. In the same notice, we issued the first acceptability lists for substitutes in the major industrial use sectors. These sectors include:

- Refrigeration and air conditioning;
- Foam blowing;
- Solvents cleaning;
- Fire suppression and explosion protection;
- Sterilants;
- Aerosols;
- Adhesives, coatings and inks; and
- Tobacco expansion.

These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Therefore, by this notice we are adding substances to the list of acceptable alternatives without first requesting comment on new listings.

However, we do believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from the lists of prohibited or acceptable substitutes. We publish updates to these lists as separate notices of rulemaking in the **Federal Register**.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance. Anyone who produces a substitute must provide EPA with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators, or end-users, when they are responsible for introducing a substitute into commerce.

You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations from the SNAP section of EPA's Ozone Depletion World Wide Web site at *www.epa.gov/ozone/title6/snap/chron.html*. This information is also available from the Air Docket (*see* **ADDRESSES** section above for contact information).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: December 9, 2002.

Brian J. McLean,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

Appendix A: Summary of Acceptable Decisions

REFRIGERATION AND AIR-CONDITIONING

End-Use	Substitute	Decision	Further information
Industrial process refrigeration (retrofit and new).	RS–24 as a substitute for CFC–12	Acceptable	
	NU–22 as a substitute for R–502	Acceptable	
	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note [1]
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Industrial process refrigeration (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Industrial process air conditioning (retrofit and new).	RS–24 as a substitute for CFC–12	Acceptable	
	NU–22 as a substitute for R–502	Acceptable	
	R–404A as a substitute for for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–414B as a substitute for for CFC–12 and CFC–14.	Acceptable	
Industrial process air conditioning (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Ice skating rinks (retrofit and new)	RS–24 as a substitute for CFC–12	Acceptable	
	NU–22 as a substitute for R–502	Acceptable	
	NU–22 as a substitute for R–502	Acceptable	
	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Ice skating rinks (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Cold storage warehouses (retrofit and new)	RS–24 as a substitute for CFC–12	Acceptable	
	NU–22 as a substitute for R–502	Acceptable	
	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Cold storage warehouses (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Refrigerated transport (retrofit and new)	RS–24 as a substitute for CFC–12	Acceptable	
	NU–22 as a substitute for R–502	Acceptable	
	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Refrigerated transport (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Retail food refrigeration (retrofit and new)	RS–24 as a substitute for CFC–12	Acceptable	
	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Retail food refrigeration (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Vending machines (retrofit and new)	RS–24 as a substitute for CFC–12	Acceptable	
	NU–22 as a substitute for R–502	Acceptable	
	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note

REFRIGERATION AND AIR-CONDITIONING—Continued

End-Use	Substitute	Decision	Further information
Vending machines (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Water coolers (retrofit and new)	RS–24 as a substitute for CFC–12	Acceptable	
	NU–22 as a substitute for R–502	Acceptable	
	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Water coolers (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Commercial ice machines (retrofit and new)	RS–24 as a substitute for CFC–12	Acceptable	
	NU–22 as a substitute for R–502	Acceptable	
	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Commercial ice machines (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Household refrigerators and freezers (retrofit and new).	R–404A as a substitute for CFC–12	Acceptable.	
	RS–24 as a substitute for CFC–12	Acceptable	
	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Household refrigerators and freezers (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Reciprocating chillers (retrofit and new)	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Reciprocating chillers (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Centrifugal chillers (retrofit and new)	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Centrifugal chillers (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Screw chillers (retrofit and new)	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Screw chillers (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Very low temperature refrigeration (retrofit and new).	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Very low temperature refrigeration (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Non-mechanical heat transfer systems (retrofit and new).	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Non-mechanical heat transfer systems (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note

REFRIGERATION AND AIR-CONDITIONING—Continued

End-Use	Substitute	Decision	Further information
Household and light commercial air conditioning (retrofit and new).			
	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Household and light commercial air conditioning (new).	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Residential dehumidifiers (retrofit and new)	RS–24 as a substitute for CFC–12	Acceptable	
	R–404A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–507A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
	R–407C as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Residential dehumidifiers (new)	R–410A as a substitute for HCFC–22 and HCFC blends.	Acceptable	*See* note
Motor vehicle air conditioning (retrofit and new).	RS–24 as a substitute for CFC–12	Acceptable subject to use conditions.	Users must use the unique fittings and label specified by the manufacturer. Use is subject to requirements under § 609 of the Clean Air Act.

[1] Note: HCFC blends include, but are not limited to, R–410A, R–401B, R–402A, R–402B, R–406A, R–408A, R–409A, R–411A, R–411B, R–411C, R–414A, R–414B, and R–416.

SOLVENT CLEANING

End-Use	Substitute	Decision	Further Information
Metal cleaning	HCFC–225ca and HCFC–225cb as a substitute for CFC–113 and methyl chloroform.	Acceptable	EPA recommends observing the manufacturer's recommended exposure guidelines of 50 ppm for the –ca isomer, 400 ppm for the –cb isomer, and 100 ppm for the commercial mixture of HCFC–225ca/cb. EPA encourages users to consider other alternatives that do not have an ozone depletion potential.

FIRE SUPPRESSION AND EXPLOSION PROTECTION

End-Use	Substitute	Decision	Further Information
Total flooding	C6–perfluoroketone as a substitute for Halon 1301.	Acceptable	Use of the agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems. For operations that install and maintain total flooding systems using this agent, EPA recommends the following: — Install and use adequate ventilation; — Clean up all spills immediately in accordance with good industrial hygiene practices; and — Provide training for safe handling procedures to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. *See* additional notes 1, 2, 3, 4, 5.

Additional notes:

1. Should conform with relevant OSHA requirements, including 29 CFR 1910, subpart L, sections 1910.160, 1910.161 (dry chemicals and aerosols) and 1910.162 (gaseous agents).
2. Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.
3. Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.

4. The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

5. EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.,* respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

AEROSOLS

End-Use	Substitute	Decision	Further Information
Aerosol solvents ..	HCFC–225ca and HCFC–225cb as a substitute for HCFC–141b.	Acceptable	EPA recommends observing the manufacturer's recommended exposure guidelines of 50 ppm for the -ca isomer, 400 ppm for the -cb isomer, and 100 ppm for the commercial mixture of HCFC–225ca/cb. EPA encourages users to consider other alternatives that do not have an ozone depletion potential.

[FR Doc. 02–32130 Filed 12–19–02; 8:45 am]
BILLING CODE 6560–50–U

DEPARTMENT OF DEFENSE

48 CFR Part 208 and Appendix G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update titles, section numbers, and paragraph designations.

EFFECTIVE DATE: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Part 208

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 208 and Appendix G to chapter 2 are amended as follows:

1. The authority citation for 48 CFR part 208 and Appendix G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.001 and 208.002 [Redesignated as 208.002 and 208.003]

2. Sections 208.001 and 208.002 are redesignated as sections 208.002 and 208.003, respectively.

208.003 [Amended]

3. Newly designated section 208.003 is amended by redesignating paragraphs (f) and (g) as paragraphs (d) and (e), respectively.

208.7000 [Amended]

4. Section 208.7000 is amended in paragraph (b), in the parenthetical, by removing ''Integrated Materiel Management'' and adding in its place ''Defense Integrated Materiel Management Manual''.

Appendix G—Activity Address Numbers

PART 2—[AMENDED]

5. Appendix G to chapter 2 is amended in part 2, in entry ''DABK15'', by removing ''Directorate of Contracting'' and adding in its place ''Contracting Command''.

[FR Doc. 02–31945 Filed 12–19–02; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 219 and Appendix I to Chapter 2

[DFARS Case 2002–D029]

Defense Federal Acquisition Regulation Supplement; Extension of DoD Pilot Mentor-Protégé Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 812 of the National Defense Authorization Act for Fiscal Year 2002. Section 812 extends, through September 30, 2005, the period during which companies may enter into agreements under the DoD Pilot Mentor-Protégé Program.

EFFECTIVE DATE: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2002–D029.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 219.7104 and Appendix I to implement section 812 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107). Section 812 extends, through September 30, 2005, the period during which companies may enter into agreements under the DoD Pilot Mentor-Protégé Program. In addition, section 812 extends, through September 30, 2008, the period during which mentor firms may incur costs that are eligible for reimbursement or credit under the Program.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002–D029.

C. Paperwork Reduction Act

The information collection requirements associated with the DoD Pilot Mentor Protégé Program have been approved by the Office of Management and Budget, under Control Number 0704–0332, for use through March 31, 2004.

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 219 and Appendix I to chapter 2 are amended as follows:

1. The authority citation for 48 CFR part 219 and Appendix I to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.7104 [Amended]

2. Section 219.7104 is amended in paragraph (b), in the last sentence, and in paragraph (d) by removing ''2005'' and adding in its place ''2008''.

Appendix I—Policy and Procedures for the DOD Pilot Mentor-Protege Program

I–102 [Amended]

3. Appendix I to chapter 2 is amended in section I–102, in paragraphs (a) and (b), by removing ''2002'' and adding in its place ''2005''.

I–103 [Amended]

4. Appendix I to chapter 2 is amended in section I–103 as follows:

a. In paragraph (a), by removing ''2002'' and adding in its place ''2005''; and

b. In paragraph (b) introductory text and paragraph (c), by removing ''2005'' and adding in its place ''2008''.

I–109 [Amended]

5. Appendix I to chapter 2 is amended in section I–109, in paragraph (e)(3), by removing ''2005'' and adding in its place ''2008''.

[FR Doc. 02–31947 Filed 12–19–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002–D008]

Defense Federal Acquisition Regulation Supplement; Trade Agreements Act—Exception for U.S.-Made End Products

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the determination of the Under Secretary of Defense (Acquisition, Technology, and Logistics) that, for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States.

EFFECTIVE DATE: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D008.

SUPPLEMENTARY INFORMATION:

A. Background

On March 14, 2002, the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) determined that, for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States. This determination expands the May 16, 1997, USD(AT&L) determination (presently implemented in DFARS part 225) that it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made information technology products in Federal Supply Group 70 or 74. The March 14, 2002, determination is consistent with Federal Acquisition Regulation policy applicable to civilian agencies with regard to the treatment of U.S.-made end products.

This DFARS rule implements the March 14, 2002, USD(AT&L) determination. The rule simplifies evaluation of offers in acquisitions subject to the Trade Agreements Act, because it is no longer necessary to determine if a U.S.-made end product is also a domestic end product, *i.e.*, the cost of domestic components exceeds the cost of all components by more than 50 percent. Additionally, the provision at DFARS 252.225–7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, and the clause at DFARS 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program, are no longer necessary, because the provision at DFARS 252.225–7020, Trade Agreements Certificate, and the clause at DFARS 252.225–7021, Trade Agreements, are now appropriate for all acquisitions subject to the Trade Agreements Act. This rule also applies the March 14, 2002, USD(AT&L) determination to acquisitions subject to the Balance of Payments Program, since the Balance of Payments Program is an extension of the Buy American Act restrictions to acquisitions of supplies for overseas use.

DoD published a proposed rule at 67 FR 49278 on July 30, 2002. Two sources submitted comments on the proposed rule. Both sources supported the DFARS changes in the proposed rule. Therefore, DoD is adopting the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* A final regulatory flexibility analysis has been prepared and is summarized as follows:

The objective of the rule is to avoid treating products substantially transformed in the United States less favorably than products substantially transformed in a designated, Caribbean Basin, or NAFTA country. Under existing DFARS policy, offers of domestic end products are given a 50 percent price evaluation preference over offers of U.S.-made end products for which the cost of foreign components exceeds the cost of domestic components by 50 percent or more. However, for acquisitions subject to the Trade Agreements Act, an end product of a designated, Caribbean Basin, or NAFTA country is exempt from application of the 50 percent evaluation factor, regardless of the source of the components. Therefore, a company might be encouraged to manufacture a product in a designated, Caribbean Basin, or NAFTA country rather than in the United States. This DFARS rule revises evaluation procedures for acquisitions subject to the Trade Agreements Act to eliminate the 50 percent price advantage that DoD presently gives to domestic end products over U.S.-made end products with foreign component content of 50 percent or more. Therefore, the cost incentive to manufacture components in the United States is removed. However, for companies that provide U.S.-made end products containing foreign components, the incentive to move end product manufacturing facilities to a designated, Caribbean Basin, or NAFTA country is reduced. There were no significant issues raised by the public

comments in response to the initial regulatory flexibility analysis.

C. Paperwork Reduction Act

The rule eliminates the requirement for offerors to track and document the origin of components of U.S.-made end products in acquisitions subject to the Trade Agreements Act. This reduces by 960 hours the annual paperwork burden requirements previously approved by the Office of Management and Budget under Control Number 0704–0229.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

225.001 [Amended]

2. Section 225.001 is amended as follows:

a. By removing paragraph (3)(ii) and redesignating paragraph (3)(iii) as paragraph (3)(ii); and

b. In newly designated paragraph (3)(ii), by removing ''U.S. made'' and adding in its place ''U.S.-made''.

225.003 [Amended]

3. Section 225.003 is amended as follows:

a. In paragraph (4), by removing ''252.225–7007, Buy American Act-Trade Agreements-Balance of Payments Program;''; and

b. In paragraph (12), by removing ''252.225–7007. Buy American Act-Trade Agreements-Balance of Payments Program;''.

4. Section 225.103 is amended as follows:

a. By redesignating paragraph (a)(1) as paragraph (a)(i); and

b. By revising newly designated paragraph (a)(i)(B) to read as follows:

225.103 Exceptions.

(a)(i) * * *

(B) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that, for procurements subject to the Trade Agreements Act, it is inconsistent with the public interest to apply the Buy American Act to end products that are substantially transformed in the United States.

* * * * *

5. Section 225.402 is revised to read as follows:

225.402 General.

To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (*see* 225.401–70).

6. Section 225.502 is revised to read as follows:

225.502 Application.

(b) Use the following procedures instead of the procedures in FAR 25.502(b) for acquisitions subject to the Trade Agreements Act:

(i) Consider only offers of U.S.-made, qualifying country, or eligible end products, except as permitted by 225.403.

(ii) If price is the determining factor, award on the low offer.

(c) Use the following procedures instead of those in FAR 25.502(c) for acquisitions subject to the Buy American Act or the Balance of Payments Program.

(i) Treat offers of eligible end products under acquisitions subject to NAFTA as if they were qualifying country offers. As used in this section, the term ''nonqualifying country offer'' may also apply to an offer that is not an eligible offer under NAFTA.

(ii) Except as provided in paragraph (c)(iii) of this section, evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see 225.504(1)).

(A) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225–8, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation (*see* 225.504(1)(ii)).

(B) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(1) On an item-by-item basis; or

(2) On a group of items, if the solicitation specifically provides for award on a group basis.

(iii) When application of the factor would not result in the award of a domestic end product, *i.e.*, when no domestic offers are received (*see* 225.504(3)) or when a qualifying or NAFTA country offer is lower than the domestic offer (*see* 225.504(2)), evaluate nonqualifying country offers without the 50 percent factor.

(A) If duty is to be exempted through inclusion of the clause at FAR 52.225–8, Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225–7003, Information for Duty-Free Entry Evaluation (*see* 225.504(2)(ii) and (3)(ii)). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(B) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty (*see* 225.504(2)(i) and (3)(i)).

(iv) If these evaluation procedures result in a tie between a nonqualifying country offer and a domestic offer, make award on the domestic offer.

(v)(A) There are two tests that must be met to determine whether a manufactured item is a domestic end product—

(1) The end product must have been manufactured in the United States; and

(2) The cost of its U.S. and qualifying country components must exceed 50 percent of the cost of all of its components. This test is applied to end products only, and not to individual components.

(B) Because of the component test, the definition of ''domestic end product'' is more restrictive than the definition for—

(1) ''U.S.-made end product'' under trade agreements;

(2) ''Domestically produced or manufactured products'' under small business set-asides or small business reservations; and

(3) Products of small businesses under FAR Part 19.

225.504 [Amended]

7. Section 225.504 is amended by removing paragraph (4).

225.1101 [Amended]

8. Section 225.1101 is amended as follows:

a. In paragraph (2)(i), by removing ''252.225–7007, Buy American Act-Trade Agreements-Balance of Payments Program;'';

b. By removing paragraph (3)(ii) and redesignating paragraphs (3)(iii) and (3)(iv) as paragraphs (3)(ii) and (3)(iii), respectively;

c. By removing paragraphs (5) and (6) and redesignating paragraphs (7) through (14) as paragraphs (5) through (12), respectively;

d. In newly designated paragraph (9), by removing ''when acquiring information technology products in Federal Supply Group 70 or 74'' and adding in its place ''if the acquisition is subject to the Trade Agreements Act''; and

e. In newly designated paragraph (12), by removing ''252.225–7007, Buy

American Act-Trade Agreements-Balance of Payments Program;''.

9. Section 225.7501 is amended by revising paragraph (b)(1)(iii) to read as follows:

225.7501 Policy.

* * * * *

(b) * * *

(1) * * *

(iii) For acquisitions subject to the Trade Agreements Act, is a U.S.-made end product; or

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

10. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read ''(DEC 2002)''; and

b. In paragraph (b), by removing ''____252.225–7007 Buy American Act-Trade Agreements-Balance of Payments Program (OCT 2002)(41 U.S.C. 10a–10d, 19 U.S.C. 2501–2518, and 19 U.S.C. 3301 note).''.

252.225–7006 and 252.225–7007 [Removed and Reserved]

11. Sections 252.225–7006 and 252.225–7007 are removed and reserved.

252.225–7008 [Amended]

12. Section 252.225–7008 is amended in the introductory text by removing ''225.1101(7)'' and adding in its place ''225.1101(5)''.

252.225–7009 [Amended]

13. Section 252.225–7009 is amended in the introductory text by removing ''225.1101(8)'' and adding in its place ''225.1101(6)''.

252.225–7010 [Amended]

14. Section 252.225–7010 is amended in the introductory text by removing ''225.1101(9)'' and adding in its place ''225.1101(7)''.

252.225–7020 [Amended]

15. Section 252.225–7020 is amended in the introductory text by removing ''225.1101(10)'' and adding in its place ''225.1101(8)''.

252.225–7021 [Amended]

16. Section 252.225–7021 is amended in the introductory text by removing ''225.1101(11)'' and adding in its place ''225.1101(9)''.

252.225–7035 [Amended]

17. Section 252.225–7035 is amended in the introductory text and in Alternate I by removing ''225.1101(12)'' and adding in its place ''225.1101(10)''.

252.225–7036 [Amended]

18. Section 252.225–7036 is amended in the introductory text and in Alternate I introductory text by removing ''225.1101(13)'' and adding in its place ''225.1101(11)''.

252.225–7037 [Amended]

19. Section 252.225–7037 is amended in the introductory text by removing ''225.1101(14)'' and adding in its place ''225.1101(12)''.

[FR Doc. 02–31946 Filed 12–19–02; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 67, No. 245
Friday, December 20, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–084–1]

Removal of Cold Treatment Requirement for Ya Pears Imported From Hebei Province in China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to remove the current cold treatment requirement for Ya pears imported from Hebei Province in the People's Republic of China. The cold treatment requirement was imposed to ensure that Ya pears did not introduce the Oriental fruit fly into the United States. The People's Republic of China has submitted data indicating that no Oriental fruit flies have been found in Hebei Province since the beginning of 1997 and has requested that we remove the cold treatment requirement. Removing the cold treatment requirement would lift a restriction that no longer appears necessary.

DATES: We will consider all comments that we receive on or before February 18, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–084–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–084–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–084–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

Section 319.56–2ee of the regulations sets out the conditions for importing Ya variety pears produced in approved growing areas in the Hebei and Shadong Provinces of the People's Republic of China. The safeguards specified in the regulations include growing the pears in registered orchards only, field inspections for pests during the growing season, applying pesticides to reduce the pest populations, bagging the pears on the trees, and inspecting the fruit after the harvest. In addition, the regulations require that the Ya pears undergo cold treatment for Oriental fruit fly in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at 7 CFR 300.1.

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruits, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid population expansion; thus, outbreaks can cause severe economic losses. Heavy infestations can cause complete loss of crops. Oriental fruit fly is prevalent throughout tropical Asia, including parts of the People's Republic of China. It does not, however, thrive in cold climates.

In March 2000, the People's Republic of China submitted fruit fly trapping data for 1997 through 1999 that showed no occurrence of Oriental fruit fly in Hebei Province. Further data have continued to indicate that Oriental fruit fly is not present in Hebei Province. (More information about these data may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.) Based on these negative findings, the People's Republic of China has requested that we remove the cold treatment requirement for Ya pears from Hebei Province. We have determined that these negative findings are sufficient proof that Oriental fruit fly is not present in Hebei Province. In addition, the cool climate of Hebei Province, which is comparable to that of Pennsylvania in the United States, does not favor the development of Oriental fruit fly. Therefore, we propose to allow Ya pears from Hebei Province to be imported into the United States without cold treatment.

As noted, Ya pears may also be imported from Shadong Province under the regulations in § 319.56–2ee. We would continue to require that Ya pears from Shadong Province be cold treated, as China has not offered evidence demonstrating that Oriental fruit fly is not present in Shadong Province. If, in the future, China provides sufficient evidence to show that Oriental fruit fly is not present in Shadong Province, we would consider removing the cold treatment requirement for Ya pears produced in Shadong Province. Therefore, we propose to amend § 319.56–2ee (b) to indicate that only pears from Shadong Province would be required to undergo cold treatment before importation into the United States.

We also propose to amend § 319.56–2ee (c), which currently indicates that each shipment of pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions of paragraphs (a) and (b) of § 319.56–2ee have been met. Because Ya

pears imported from Hebei Province will no longer be subject to the conditions in § 319.56–2ee (b), we propose to amend § 319.56–2ee (c) to simply state that the phytosanitary certificate must state that the conditions of the section as a whole have been met.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would remove the cold treatment requirement for Ya pears imported from Hebei Province in the People's Republic of China. This proposal is in response to data from the plant protection organization of the People's Republic of China indicating that Oriental fruit fly does not occur in Hebei Province and the fact that climatic conditions do not favor the establishment of Oriental fruit fly in Hebei Province.

The rapid growth in Ya pear imports by the United States from China is evident in Table 1. Imports increased from about 329,000 kilograms in 1998 to over 6.57 million kilograms in 2001. The estimated cost savings discussed in this analysis are based on the import quantity and value for 2001.

TABLE 1.—YA VARIETY PEAR IMPORTS FROM CHINA

	Quantity (kilograms)	Value (millions of dollars)	Price (dollars per kilogram)
1998	328,818	$0.328	$1.00
1999	2,097,863	2.011	0.96
2000	5,264,099	3.746	0.71
2001	6,573,113	3.559	0.54

Source: World Trade Atlas, based on data from the U.S. Bureau of the Census. Harmonized Tariff Schedule code 080820.

We expect that removing the cold treatment requirement for Ya pears imported from Hebei Province would reduce shipping costs. The magnitude of the reduction would depend on transport costs with and without the cold treatment requirement. While refrigeration costs would still be borne by importers in the absence of the cold treatment requirement, the costs required to maintain, monitor, and report cold treatment temperatures during transport would all be saved.

The cold treatment schedule for Ya pears from China, as specified in the Plant Protection and Quarantine Treatment Manual, is T107–f. The number of days required for cold treatment en route under the schedule—10 to 14 days, depending on the treatment temperature—is less than the number of days it takes to ship Ya pears to the United States from China. No reduction in shipping time, and thus no associated cost savings, is expected to result from the proposed removal of the cold treatment requirement.

A recent analysis of cold treatment requirements for the Mediterranean fruit fly at U.S. ports, used here as a proxy for cold treatment costs en route, indicated a cost of 50 cents per day per pallet.[1] Most of this expense is the cost of refrigeration. Under the proposed rule, Ya pears from Hebei Province would still be refrigerated while en route to the United States, although not to cold treatment specifications. For this analysis, it is assumed that the savings from not having to meet cold treatment requirements would be 25 cents per day per pallet. This amount probably exceeds the actual savings that would be realized, providing an upper-bound approximation of potential effects.

Assuming that boxing and pallet loading capacities are similar to those of domestic pears, a box of Ya pears would contain about 20 kilograms and a pallet would contain 49 boxes.[2] Assuming further a 14-day cold treatment period, the longest specified in the cold treatment regimen, the cost of cold treatment would be about 36 cents per 100 kilograms, or 0.36 cents per kilogram.[3] As shown in Table 1, the average price of Ya pears has steadily fallen since imports began in 1998. Even so, estimated savings from not having to meet cold treatment requirements represent less than 1 percent of the 2001 price of 54 cents per kilogram. In addition, pears from Shadong Province would be unaffected by the proposed change, further dampening the total cost effect in the United States.

Ya pears are not produced in the United States, and Ya pears are not a substitute for domestically produced pears. Thus, this proposed rule is not expected to affect the U.S. domestic pear industry.

Economic Effects on Small Entities

Under the criteria established by the Small Business Administration, fruit importers (North American Industry Classification System code 422480, ''Fresh Fruit and Vegetable Wholesalers'') must have 100 or fewer employees to be considered small entities. At least some U.S. importers of Ya pears from Hebei Province in China may be small entities, but the expected economic effect of no longer needing to meet cold treatment requirements is minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Further, this proposed rule would reduce information collection or recordkeeping requirements in § 319.56–2ee.

[1] Analysis for APHIS Docket 02–071–1, published in the **Federal Register** on October 15, 2002 (67 FR 63529–63536).

[2] The packing measure used for pears is four-fifths of a bushel, which corresponds to about 42 to 45 pounds. (Kevin Moffett, Pear Bureau, personal communication.)

[3] (Twenty-five cents per day per pallet) x (14 days per treatment) = $3.50 per pallet per treatment. (Twenty kilograms per box) x (49 boxes per pallet) = 980 kilograms per pallet. ($3.50) / (980 kilograms) = $0.00357/kg.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would be revised to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.56–2ee, paragraphs (b) and (c) would be revised to read as follows:

§ 319.56–2ee Administrative instructions: Conditions governing the entry of Ya variety pears from China.

* * * * *

(b) *Treatment.* Pears from Shadong Province must be cold treated for *Bactrocera dorsalis* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(c) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions of this section have been met.

* * * * *

Done in Washington, DC, this 17th day of December, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–32056 Filed 12–19–02; 8:45 am]

BILLING CODE 3410–34–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 429

RIN 0960–AF39

Filing Claims Under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rules.

SUMMARY: We propose to establish new regulation that would prescribe the procedures SSA follows when claims are filed by employees against SSA for personal property damage or loss incident to their service with SSA. This new regulation is necessary both to reflect SSA's status as an independent agency and to comply with the requirement in the Military Personnel and Civilian Employees Claims Act of 1964 (MPCECA) that the head of each federal agency prescribe its own regulations for handling such claims.

We also propose to make several minor clarifications and corrections to our current procedures and practices on claims against the Government for damage to or loss of property or personal injury or death that is caused by the negligent or wrongful act or omission of an SSA employee. We have also rewritten the current rules on such claims in plain language.

DATES: To be sure that your comments are considered, we must receive them no later than February 18, 2003.

ADDRESSES: You may give us your comments by using: Our Internet site facility (*i.e.*, Social Security Online) at *http://www.ssa.gov/regulations,* e-mail to regulations@ssa.gov; telefax to (410) 966–2830; or by sending a letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version

The electronic file of this document is available on the Internet at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site for SSA (*i.e.*, ''SSA Online'') at *http://www.ssa.gov/regulations.*

FOR FURTHER INFORMATION CONTACT: Jonathan R. Cantor, Attorney-at-Law, Office of General Law, Office of the General Counsel, Social Security Administration, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965–3166 or TTY (410) 966–5609.

SUPPLEMENTARY INFORMATION:

Employee Claims for Personal Property Damage or Loss

The MPCECA, 31 U.S.C. 3721, establishes the guidelines Federal agencies must follow when an agency employee files a claim for personal property damage or loss incurred incident to his or her Federal service. Under the MPCECA, the head of each Federal agency is required to promulgate its own regulations setting forth the procedures and practices the agency will follow in handling such claims (31 U.S.C. 3721(j)). The Social Security Independence and Improvements Act of 1994 (Pub. L. 103–296) established SSA as an independent agency in the executive branch of the United States Government effective March 31, 1995 and vested general regulatory authority in the Commissioner of Social Security. In order to comply with the requirement in the MPCECA that SSA have its own regulations dealing with employee claims, we propose to establish a new subpart B in part 429 of Title 20 of the Code of Federal Regulations.

The proposed rules in new subpart B of part 429 are modeled after those routinely published by other Federal agencies and would contain the following sections:

- Section 429.201 would explain that the new subpart applies to employee claims under the MPCECA, set a $40,000 limit on the amount of payment for a claim, and define several terms used throughout the subpart.
- Section 429.202 would explain the procedures an employee should follow to file a claim for personal property loss or damage incident to service.
- Section 429.203 would explain the circumstances under which a claim for personal property loss or damage is allowable.
- Section 429.204 would describe the restrictions that apply to employee claims for personal property damage or loss.
- Section 429.205 would contain a list of the types of losses that are not allowable under subpart B.
- Section 429.206 would explain the procedures that are applicable when a claim involves a commercial carrier or an insurer.
- Section 429.207 would explain how an employee should file a claim for personal property damage or loss.
- Section 429.208 would explain how the SSA Claims Officer determines the amount of an award.
- Section 429.209 would contain the maximum fee an agent or attorney may receive for his/her services in connection with an individual claim under subpart B.
- Section 429.210 would explain the appeal process for claims under subpart B.
- Section 429.211 would contain the penalties for filing false claims.

Tort Claims

These proposed rules would also modify our existing rules dealing with the procedures SSA follows when

claims are asserted under the Federal Tort Claims Act (FTCA), 28 U.S.C. 2672, for money damages against the United States for injury or death caused by the negligent or wrongful act or omission of any SSA employee. We propose to revise our regulations on tort claims as follows:

- We would revise § 429.101 to reflect the statutory provision in the FTCA that the FTCA does not apply to those tort claims identified in 28 U.S.C. 2680. Our current rules do not contain this statutory limitation.
- We would revise § 429.103 to correct the mailing address in this section.
- We would revise the time limit in § 429.104 for submitting evidence in a claim for money damages from 3 months to 60 days. Under the FTCA, this time limit is to be determined by the agency and we believe 60 days constitutes a reasonable limit for submitting evidence after being asked to do so.
- We would revise § 429.107 to clarify an ambiguity in current regulations. If a claim is approved that exceeds $2500, our rules would be revised to specify that the payment will come from the Judgment Fund in the Department of the Treasury, rather than from SSA. This reflects current procedure and the proposed change would only serve to increase the efficiency of the claims process and to speed delivery of the payment to the claimant.
- We propose to revise the penalties for filing false claims to reflect changes in both the criminal and civil False Claims Act.

We also propose to rewrite the existing regulations on tort claims to comply with Executive Order 12866, as amended by Executive Order 13258, which requires Federal agencies to write all rules in plain language. None of these plain language changes are substantive; they are merely intended to make the existing regulations more readable and easier to understand.

Clarity of This Proposed Rule

As explained above, Executive Order 12866, as amended by Executive Order 13258, require each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make this proposed rule easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- What else could we do to make the rule easier to understand?

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that the proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities because it only affects individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules.

Section number	Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
429.102; 429.103	1	1	1	1
429.104(a)	30	1	5	2.5
429.104(b)	25	1	5	2
429.104(c)	2	1	5	.16
429.106(b)	10	1	10	1.6

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments may be faxed or mailed to the Social Security Administration at the following address: Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. Fax No. 410–965–6400.

Comments can be received for between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.003 Social Security-Special Benefits for Persons Aged 72 and Over; 96.004 Social Security-Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006, Supplemental Security Income; 96.007 Social Security-Research and Demonstration)

List of Subjects in 20 CFR Part 429

Administrative practice and procedure, Government employees, Indemnity payments, Tort claims.

Dated: September 23, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to revise part 429 of chapter III of title 20 of the Code of Federal Regulations to read as follows:

PART 429—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND RELATED STATUTES

Subpart A—Claims Against the Government Under the Federal Tort Claims Act

Sec.

Authority: Sect. 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5)); 28 U.S.C. 2672; 28 CFR 14.11; 31 U.S.C. 3721.

Subpart A—Claims Against the Government Under the Federal Tort Claims Act

§ 429.101 What is this subpart about?

This subpart applies only to claims filed under the Federal Tort Claims Act, as amended, 28 U.S.C. 2671–2680 (FTCA), for money damages against the United States for damage to or loss of property or personal injury or death that is caused by the negligent or wrongful act or omission of an employee of the Social Security Administration (SSA). The loss, damage, injury or death must be caused by the employee in the performance of his or her official duties, under circumstances in which the United States, if a private person, would be liable in accordance with the law of the place where the act or omission occurred. This subpart does not apply to any tort claims excluded from the FTCA under 28 U.S.C. 2680.

(b) This subpart is subject to and consistent with the regulations on administrative claims under the FTCA issued by the Attorney General at 28 CFR part 14.

§ 429.102 How do I file a claim under this subpart?

(a) *Filing an initial claim.* You must either file your claim on a properly executed Standard Form 95 or you must submit a written notification of the incident accompanied by a claim for the money damages in a sum certain for damage to or loss of property you believe occurred because of the incident. For purposes of this subpart, we consider your claim to be filed on the date we receive it, at the address specified in paragraph (c) of this section. If you mistakenly send your claim to another Federal agency, we will not consider it to be filed until the date that we receive it. If you mistakenly file a claim meant for another Federal agency with SSA, we will transfer it to the appropriate Federal agency, if possible. If we are unable to determine the appropriate agency, we will return the claim to you.

(b) *Filing an amendment to your claim.* You may file an amendment to your properly filed claim at any time before the SSA Claims Officer (as defined in § 429.201(d)(3)) makes a final decision on your claim or before you bring suit under 28 U.S.C. 2675(a). You must submit an amendment in writing and sign it. If you file a timely amendment, SSA has 6 months in which to finally dispose of the amended claim. Your option to file suit does not begin until 6 months after you file the amendment.

(c) *Where to obtain claims forms and file claims.* You may obtain claims forms and must file your claim with the Social Security Administration, Office of the General Counsel, Administrative Claims Unit, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

§ 429.103 Who may file my claim?

(a) *Claims for damage to or loss of property.* If you are the owner of the property interest that is the subject of the claim, you, your duly authorized agent, or your legal representative may file the claim.

(b) *Claims for personal injury.* If you suffered the injury, you, your duly authorized agent, or your legal representative may file the claim.

(c) *Claims based on death.* The executor or administrator of your estate or any other person legally entitled to do so may file the claim.

(d) *Claims for loss wholly compensated by an insurer with the rights of a subrogee.* The insurer may file the claim. When an insurer presents a claim asserting the rights of a subrogee, the insurer must present with the claim appropriate evidence that it has the rights of a subrogee.

(e) *Claims for loss partially compensated by an insurer with the rights of a subrogee.* You and the insurer may file, jointly or separately. When an insurer presents a claim asserting the rights of a subrogee, the insurer must present with the claim appropriate evidence that it has the rights of a subrogee.

(f) *Claims by authorized agents or other legal representatives.* Your duly authorized agent or other legal representative may submit your claim, provided satisfactory evidence is submitted establishing that person has express authority to act on your behalf. A claim presented by an agent or legal representative must be presented in your name. If the claim is signed by the agent or legal representative, it must show the person's title or legal capacity and must be accompanied by evidence that the person has the authority to file the claim on your behalf as agent, executor, administrator, parent, guardian or other representative.

§ 429.104 What evidence do I need to submit with my claim?

(a) *Property damage.* To support a claim for property damage, either real or personal, you may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, market value of the property as of date of damage, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing either on the responsibility of the United States for the injury to or loss of property or the damages claimed.

(b) *Personal injury.* To support a claim for personal injury, including pain and suffering, you may be required to submit the following evidence or information:

(1) A written report from your attending physician or dentist setting forth the nature and extent of your injury, nature and extent of treatment, any degree of temporary or permanent disability, your prognosis, period of hospitalization, and any diminished earning capacity. You may also be required to submit to a physical or mental examination by a physician employed or designated by SSA. If you submit a written request, we will

provide you with a copy of the report of the examining physician provided you agree to make available to SSA any other physician's reports made of the physical or mental condition that is the subject of your claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If your prognosis reveals that you will need future treatment, a statement of expected duration of and expenses for such treatment.

(4) If you claim a loss of time from employment, a written statement from your employer showing actual time lost from employment, whether you are a full or part-time employee, and wages or salary you actually lost.

(5) If you claim a loss of income and are self-employed, documentary evidence showing the amount of earnings you actually lost. For example, we may use income tax returns for several years prior to the injury in question and the year in which the injury occurred to indicate or measure lost income; a statement of how much it cost you to hire someone to do the same work you were doing at the time of the injury might also be used in measuring lost income.

(6) Any other evidence or information that may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Claim Based on Death.* To support the claim, we need the following evidence or information:

(1) An authenticated death certificate or other believable documentation showing cause of death, date of death, and your age at the time of death.

(2) Your employment or occupation at time of death, including your monthly or yearly salary or earnings (if any), and the duration of your last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of your survivors, including identification of those survivors who were dependent upon you for support at the time of your death.

(4) Degree of support you provided to each survivor dependent on you for support at the time of your death.

(5) Your general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred, or itemized receipts of payments for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain and your physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(d) *Time limit for submitting evidence.* You must furnish all the evidence required by this section within a reasonable time. If you fail to furnish all the evidence necessary to determine your claim within 60 days after being asked to do so, we may find that you have decided to abandon your claim.

§ 429.105 What happens when you receive my claim?

When we receive your claim, we will investigate to determine its validity. After our investigation, we will forward your claim to the SSA Claims Officer with our recommendation as to whether your claim should be fully or partially allowed or denied.

§ 429.106 What happens if my claim is denied?

(a) If your claim is denied, the SSA Claims Officer will send you, your agent, or your legal representative a written notice by certified or registered mail. The notice will include an explanation of why your claim was denied and will advise you of your right to file suit in an appropriate U.S. District Court not later than 6 months after the date of the mailing of the notice if you disagree with the determination.

(b) Before filing suit and before expiration of the 6-month period after the date of the mailing of the denial notice, you, your duly authorized agent, or your legal representative may file a written request with SSA for reconsideration by certified or registered mail. If you file a timely request for reconsideration, SSA has 6 months from the date you file your request in which to finally dispose of your claim. Your right to file suit will not begin until 6 months after you file your request for reconsideration. Final SSA action on your request for reconsideration will occur in accordance with the provisions of paragraph (a) of this section.

§ 429.107 If my claim is approved, how do I obtain payment?

(a) *Claims under $2,500.* If your claim is approved, you must complete a ''Voucher for Payment under the Federal Tort Claims Act,'' Standard Form 1145. If you are represented by an attorney, the voucher for payment (SF 1145) must designate both you and your attorney as ''payees''; we will then mail the check to your attorney.

(b) *Claims in excess of $2,500.* If your claim is approved, SSA will forward the appropriate Financial Management Service (FMS) Forms 194, 195, 196, 197, and/or 197–A to the Judgment Fund Section, Financial Management Service, Department of the Treasury, Room 6D37, 3700 East-West Highway, Hyattsville, Maryland 20782. FMS will then mail the payment to you.

§ 429.108 What happens if I accept an award, compromise or settlement under this subpart?

If you, your agent, or your legal representative accept any award, compromise or settlement under this subpart, your acceptance is final and conclusive on you, your agent or representative and any other person on whose behalf or for whose benefit the claim was filed. The acceptance constitutes a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

§ 429.109 Are there any penalties for filing false claims?

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be imprisoned for not more than 5 years. (18 U.S.C. Secs. 287; 1001). In addition, that person may be liable for a civil penalty of not less than $5,000 and not more than $10,000 and damages of triple the loss or damage sustained by the United States, as well as the costs of a civil action brought to recover any penalty or damages. (31 U.S.C. Sec. 3729).

§ 429.110 Are there any limitations on SSA's authority under this subpart?

(a) An award, compromise or settlement of a claim under this subpart in excess of $25,000 needs the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, we treat a principal claim and any derivative or subrogated claim as a single claim.

(b) An administrative claim may be adjusted, determined, compromised or settled under this subpart only after consultation with the Department of Justice when, in the opinion of SSA:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and SSA is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised or settled only after consultation with the Department of Justice when it is learned that the United States or an employee, agent or cost plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

Subpart B—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

§ 429.201 What is this subpart about?

(a) *Scope and Purpose.* This subpart applies to all claims filed by or on behalf of employees of SSA for loss of or damage to personal property incident to their service with SSA under the Military Personnel and Civilian Employees Claims Act of 1964, as amended, 31 U.S.C. 3721, (MPCECA). A claim must be substantiated and the possession of the property determined to be reasonable, useful or proper.

(b) *Maximum payment under this part.* The maximum amount that can be paid for any claim under the Act is $40,000 or, in extraordinary circumstances, $100,000, and property may be replaced in kind at the discretion of the Government.

(c) *Policy.* SSA is not an insurer and does not underwrite all personal property losses that an employee may sustain incident to employment. We encourage employees to carry private insurance to the maximum extent practicable to avoid losses which may not be recoverable from SSA. The procedures set forth in this subpart are designed to enable you to obtain the proper amount of compensation from SSA and/or a private insurer for the loss or damage. If you fail to comply with these procedures it could reduce or preclude payment of your claim under this subpart.

(d) *Definitions.*

(1) *Quarters,* unless otherwise indicated, means a house, apartment, or other residence that is an SSA employee's principal residence.

(2) *State,* unless otherwise indicated, is defined by § 404.2(c)(5) of title 20 of the Code of Federal Regulations.

(3) *SSA Claims Officer* means the SSA official designated to determine claims under the Act. The current designee is the Associate General Counsel for General Law.

§ 429.202 How do I file a claim under this subpart?

(a) *Who may file.*

(1) You, your duly authorized agent, your legal representative or your survivor may file the claim. If your survivor files the claim, the order of precedence for filing is spouse, child, parent, sibling.

(2) You may not file a claim on behalf of a subrogee, assignee, conditional vendor or other third party.

(b) *Where to file.* You must file your claim with the Social Security Administration, Office of the General Counsel, Administrative Claims Unit, 6401 Security Boulevard, Room 617 Altmeyer Building, Baltimore, Maryland 21235.

(c) *Evidence required.* You are responsible for proving ownership or possession, the facts surrounding the loss or damage, and the value of the property. Your claim must include the following:

(1) A written statement, signed by you or your authorized agent, explaining how the damage or loss occurred. This statement must also include:

(i) A description of the type, design, model number or other identification of the property.

(ii) The date you purchased or acquired the property and its original cost.

(iii) The location of the property when the loss or damage occurred.

(iv) The value of the property when lost or damaged.

(v) The actual or estimated cost of the repair of any damaged item.

(vi) The purpose of and authority for travel, if the loss or damage occurred while you were transporting your property or using a motor vehicle.

(vii) All available information as to who was responsible for the loss or damage, if it was not you, and all information as to insurance contracts, whether in your name or in the name of the responsible party.

(viii) Any other evidence about loss or damage that the SSA Claims Officer determines is necessary.

(2) Copies of all available and appropriate documents such as bills of sale, estimates of repairs, or travel orders. In the case of damage to an automobile, you must submit at least two estimates of repair or a certified paid bill showing the damage incurred and the cost of all parts, labor and other items necessary to the repair of the vehicle or a statement from an authorized dealer or repair garage showing that the cost of such repairs exceeds the value of the vehicle.

(3) A copy of the power of attorney or other authorization if someone else files the claim on your behalf.

(4) A statement from your immediate supervisor confirming that possession of the property was reasonable, useful or proper under the circumstances and that the damage or loss was incident to your service.

(d) *Time limitations.* You must file a written claim within 2 years after accrual of the claim. For purposes of this subpart, your claim accrues at the later of:

(1) The time of the accident or incident causing the loss or damage;

(2) The time the loss or damage should have been discovered by the claimant by the exercise of due diligence; or

(3) Where valid circumstances prevented you from filing your claim earlier, the time that should be construed as the date of accrual because of a circumstance which prevents the filing of a claim. If war or armed conflict prevents you from filing the claim, your claim accrues on the date hostilities terminate and your claim must be filed within two years of that date.

§ 429.203 When is a claim allowable?

(a) A claim is allowable only if you were using the property incident to your service with SSA, with the knowledge and consent of a superior authority, and:

(1) The damage or loss was not caused wholly or partially by the negligent or improper action or inaction of you, your agent, the members of your family, or your private employee (the standard to be applied is that of reasonable care under the circumstances); and

(2) The possession of the property lost or damaged and the quantity and the quality possessed is determined to have been reasonable, useful or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims that are otherwise allowable under this subpart will not be disallowed solely because you were not the legal owner of the property for which the claim is made.

(c) Subject to the conditions in paragraph (a) of this section and the other provisions of this subpart, any claim you make for damage to, or loss of, personal property that occurs incident to your service with SSA may be considered and allowed. For the purpose of this subpart, if you were performing your official duties at an alternate work location under an approved flexiplace agreement, the alternate work location will be considered an official duty station even if it is located in your principal residence. The alternate work location is not considered to be quarters. The following are examples of the principal types of claims that are allowable, but these examples are not exclusive and other types of claims are allowable,

unless specifically excluded under this subpart:

(1) *Property damage in quarters or other authorized places.* Claims are allowable for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within a state that were assigned to you or otherwise provided in kind by the United States; or

(ii) Any warehouse, office, working area or other place (except quarters) authorized or apparently authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims are allowable for damage to, or loss of, property incident to transportation or storage of such property pursuant to order or in connection with travel under orders, including property in your custody or in the custody of a carrier, an agent or agency of the Government.

(3) *Mobile homes.* Claims may be allowed for damage to, or loss of, mobile homes and their contents under the provisions of paragraph (c)(2) of this section. Claims for structural damage to mobile homes, other than that caused by collision, and damage to contents of mobile homes resulting from such structural damage, must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to, or loss of, tires mounted on mobile homes are not allowable, except in cases of collision, theft or vandalism.

(4) *Enemy action or public service.* Claims are allowable for damage to, or loss of, property that directly result from:

(i) Enemy action or threat of enemy action, or combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals.

(ii) Action you take to quiet a civil disturbance or to alleviate a public disaster.

(iii) Efforts you make to save human life or Government property.

(5) *Property used for the benefit of the Government.* Claims are allowable for damage to, or loss of, property when used for the benefit of the Government at the request of, or with the knowledge and consent of, superior authority up to the amount not compensated by private insurance.

(6) *Clothing and accessories.* Claims are allowable for damage to, or loss of, clothing and accessories a person customarily wears and devices such as eyeglasses, hearing aids, dentures, or prosthetics.

(7) *Expenses incident to repair.* You may be reimbursed for the payment of any sales tax and other such fees incurred in connection with repairs to an item. The costs of obtaining estimates of repair (subject to the limitations set forth in § 429.204(c)) are also allowable.

§ 429.204 Are there any restrictions on what is allowable?

Claims of the type described in this section are only allowable subject to the restrictions noted:

(a) *Money or currency, including coin collections.* Allowable only when lost because of fire, flood, hurricane, other natural disaster, theft from quarters (as limited by § 429.203(c)(1)), or under other reasonable circumstances in which it would be in the Government's best interest to make payment. In cases involving theft from quarters, the evidence must conclusively show that your quarters were locked at the time of the theft. Reimbursement for loss of money or currency is limited to the amount it is determined reasonable for you to have had in your possession at the time of the loss.

(b) *Government property.* Allowable only for property owned by the United States for which you are financially responsible to an agency of the Government other than SSA.

(c) *Estimate fees.* Allowable for fees paid to obtain estimates of repairs only when it is clear that you could not have obtained an estimate without paying a fee. In that case, the fee is allowable only in an amount determined to be reasonable in relation to the value of the property or the cost of the repairs.

(d) *Automobiles and motor vehicles.* (1) Claims may only be allowed for damage to, or loss of automobiles and other motor vehicles if:

(i) You were required to use a motor vehicle for official Government business (official Government business, as used here, does not include travel, or parking incident to travel, between quarters and office, quarters and an approved telecommuting center, or use of vehicles for the convenience of the owner. However, it does include travel, and parking incident thereto, between quarters and an assigned place of duty specifically authorized by your supervisor as being more advantageous to the Government); or

(ii) Shipment of such motor vehicles was being furnished or provided by the Government, subject to the provisions of § 429.206 of this chapter; or

(2) When a claim involves damage to or loss of automobile or other motor vehicle, you will be required to present proof of insurance coverage, the deductible amount, and the amount, if any, you recovered from the insurer. If your claim is for an amount that exceeds the deductible on the insurance policy, the maximum allowable recovery will be for the amount of the deductible. If the vehicle is uninsured, the maximum allowed will be $500.00.

(e) *Computers and Electronics.* Claims may be allowed for loss of, or damage to, cellular phones, fax machines, computers and related hardware and software only when lost or damaged incident to fire, flood, hurricane, other natural disaster, theft from quarters (as limited by § 429.203(c)(1) of this chapter), other reasonable circumstances in which it would be in the Government's best interest to make payment, or unless being shipped as a part of a change of duty station paid for by the Agency. In incidents of theft from quarters, it must be conclusively shown that your quarters were locked at the time of the theft.

(f) *Alternate Work Locations.* When a claim is filed for property damage or loss at a non-Government alternate work location at which you are working pursuant to an approved flexiplace work agreement, you are required to present proof of insurance coverage, the deductible amount, and the amount, if any, you recovered from the insurer. If your claim is for an amount that exceeds the deductible on the insurance policy, the maximum allowable recovery will be for the amount of the deductible. If the property is uninsured, the maximum allowed will be $1000.00.

§ 429.205 What is not allowable under this subpart?

Claims are not allowable for the following:

(a) *Unassigned quarters in United States.* Property loss or damage in quarters you occupied within any state that were not assigned to you or otherwise provided in kind by the United States.

(b) *Business property.* Property used for business or profit.

(c) *Unserviceable property.* Wornout or unserviceable property.

(d) *Illegal possession.* Property acquired, possessed or transferred in violation of the law or in violation of applicable regulations or directives.

(e) *Articles of extraordinary value.* Valuable articles, such as cameras, watches, jewelry, furs or other articles of extraordinary value. This prohibition does not apply to articles in your personal custody or articles properly checked or inventoried with a common carrier, if you took reasonable protection or security measures.

(f) *Intangible property.* Loss of property that has no extrinsic and

marketable value but is merely representative or evidence of value, such as non-negotiable stock certificates, promissory notes, bonds, bills of lading, warehouse receipts, insurance policies, baggage checks, and bank books, is not compensable. Loss of a thesis, or other similar item, is compensable only to the extent of the out-of-pocket expenses you incurred in preparing the item such as the cost of the paper or other materials. No compensation is authorized for the time you spent in its preparation or for supposed literary value.

(g) *Incidental expenses and consequential damages.* The Act and this subpart authorize payment for loss of or damage to personal property only. Except as provided in § 429.203(c)(7), consequential damages or other types of loss or incidental expenses (such as loss of use, interest, carrying charges, cost of lodging or food while awaiting arrival of shipment, attorney fees, telephone calls, cost of transporting you or your family members, inconvenience, time spent in preparation of claim, or cost of insurance premiums) are not compensable.

(h) *Real property.* Damage to real property is not compensable. In determining whether an item is considered to be an item of personal property, as opposed to real property, normally, any movable item is considered personal property even if physically joined to the land.

(i) *Commercial property.* Articles acquired or held for sale or disposition by other commercial transactions on more than an occasional basis, or for use in a private profession or business enterprise.

(j) *Commercial storage.* Property stored at a commercial facility for your convenience and at your expense.

(k) *Claims for minimum amount.* Loss or damage amounting to less than $25.

§ 429.206 What if my claim involves a commercial carrier or an insurer?

In the event the property which is the subject of the claim was lost or damaged while in the possession of a commercial carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(b) Whenever property is damaged, lost or destroyed incident to your service and is insured in whole or in part, you must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage, before filing a claim against the Government.

(c) Failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer had the claim been timely or diligently prosecuted. However, no deduction will be made where the circumstances of your service preclude reasonable filing of a claim or diligent prosecution, or the evidence indicates a demand was impracticable or would have been unavailing.

(d) After you file a claim against the carrier or insurer, you may immediately submit a claim under this subpart, without waiting until the carrier or insurer finally approves or denies your claim.

(1) Upon submitting your claim, you must certify whether you have not gained any recovery from a carrier or insurer, and enclose all pertinent correspondence.

(2) If the carrier or insurer has not taken final action on your claim, you must immediately tell the carrier or insurer to address all correspondence regarding the claim to the SSA Claims Officer, and you must provide a copy of this notice to the SSA Claims Officer.

(3) You must advise the SSA Claims Officer of any action the carrier or insurer takes on the claim and, upon request, must furnish all correspondence, documents, and other evidence pertinent to the matter.

(e) You must assign to the United States, to the extent you accept any payment on the claim, all rights, title and interest in any claim you may have against any carrier, insurer, or other party arising out of the incident on which your claim against the United States is based. After payment of the claim by the United States, you must, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment you received from the United States.

(f) If you recover for the loss from the carrier or insurer before your claim under this subpart is settled, the amount of recovery will be applied to the claim as follows:

(1) If you recover an amount that is greater than or equal to your total loss as determined under this subpart, no compensation is allowable under this subpart.

(2) If you recover an amount that is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss.

(3) For this purpose, your total loss is determined without regard to the maximum payment limitations set forth in § 429.201. However, if the resulting amount after making this deduction exceeds the maximum payment limitations, you will only be allowed the maximum amount set forth in § 429.201.

(g) In a claim arising from damage to an automobile or other motor vehicle, in no event may recovery exceed the reasonable deductible on the insurance policy.

§ 429.207 What are the procedures for filing a claim?

(a) *Form of claim.* Your claim must be presented in writing (SSA Form 1481 is available for this purpose). Any writing received by the SSA Claims Officer within the time limits set forth in § 429.202(d) will be accepted and considered a claim under the MPCECA if it constitutes a demand for compensation from SSA. A demand is required to be for a specific sum of money.

(b) *Award.* The SSA Claims Officer is authorized to settle claims filed under this subpart.

(c) *Notification.* The deciding official will provide you with a written determination on your claim.

§ 429.208 How do you determine the award? Is the settlement of my claim final?

(a) The amount allowable for damage to or loss of any item of property may not exceed the lowest of:

(1) The amount you requested for the item as a result of its loss, damage or the cost of its repair;

(2) The actual or estimated cost of its repair; or

(3) the actual value at the time of its loss, damage, or destruction. The actual value is determined by using the current replacement cost or the depreciated value of the item since you acquired it, whichever is lower, less any salvage value of the item in question, if you retain the item.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time

elapsed between the date you acquired it and the date of damage or loss.

(c) Current replacement cost and depreciated value are determined by use of publicly available adjustment rates or through use of other reasonable methods at the discretion of the SSA Claims Officer.

(d) Replacement of lost or damaged property may be made in kind wherever appropriate at the discretion of the SSA Claims Officer.

(e) At the discretion of the SSA Claims Officer, you may be required to turn over an item alleged to have been damaged beyond economical repair to the United States, in which case no deduction for salvage value will be made in the calculation of actual value.

(f) Settlement of claims under the Act are final and conclusive.

§ 429.209 Are there any restrictions on attorney's fees?

No more than 10 per cent of the amount in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. A person violating this subsection shall be fined not more than $1,000.00. (31 U.S.C. 3721(i))

§ 429.210 Do I have any appeal rights under this subpart?

(a) *Deciding Official.* While you may not appeal the decision of the SSA Claims Officer in regard to claims under the MPCECA, the SSA Claims Officer may, at his or her discretion, reconsider his or her determination of a claim.

(b) *Claimant.* You may request reconsideration from the SSA Claims Officer by sending a written request for reconsideration to the SSA Claims Officer within 30 days of the date of the original determination. You must clearly state the factual or legal basis upon which you base your request for a more favorable determination. Reconsideration will be granted only for reasons not available or not considered during the original decision.

(c) *Notification.* The SSA Claims Officer will send you a written determination on your request for reconsideration. If the SSA Claims Officer elects to reconsider your claim, the final determination on reconsideration is final and conclusive.

§ 429.211 Are there any penalties for filing false claims?

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be imprisoned for not more than 5 years (18 U.S.C. 287; 1001). In addition, that person may be liable for a civil penalty of not less than $5,000 and not more than $10,000 and damages of triple the loss or damage sustained by the United States, as well as the costs of a civil action brought to recover any penalty or damages (31 U.S.C. 3729).

[FR Doc. 02–32051 Filed 12–19–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–151]

RIN 2115–AE47

Drawbridge Operation Regulations; Biscayne Bay, Atlantic Intracoastal Waterway, Miami River, Miami-Dade County, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the regulations governing the operation of the East and West Spans of the Venetian Causeway bridges across the Miami Beach Channel on the Atlantic Intracoastal Waterway, and the Brickell Avenue and Miami Avenue bridges across the Miami River, Miami-Dade County. This proposed rule would allow these bridges to remain in the closed position during the running of the Miami Tropical Marathon on February 2, 2003.

DATES: Comments and related material must reach the Coast Guard on or before January 21, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Ave, Room 432, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, are part of [CGD07–02–151] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, 909 SE. 1st Ave Miami, FL 33131, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–151], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. We anticipate making this proposed rule effective less than 30 days after the date of publication in the **Federal Register** because the event is scheduled for February 2, 2003 and we want to allow enough time for the public to comment on this proposed rule.

Public Meeting

A public meeting has not been scheduled for this proposed rule. However, you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE 1st Ave, Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Miami Tropical Marathon Director has requested that the Coast Guard temporarily change the existing regulations governing the operation of the East and West Spans of the Venetian Causeway bridges, and the Brickell Avenue and Miami Avenue bridges to allow them to remain in the closed position during the running of the Miami Tropical Marathon on February 2, 2003. The marathon route passes over these four bridges and any bridge opening would disrupt the race. Based on the limited time the bridges would be closed, the Coast Guard believes it can accommodate the request while still providing for the reasonable needs of navigation.

The East and West Spans of the Venetian Causeway bridges are located between Miami and Miami Beach. The current regulation governing the operation of the East Span of the Venetian Causeway bridge is published in 33 CFR 117.269 and requires the bridge to open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and from 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened.

However, the draw shall open at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m., if any vessels are waiting to pass. The draw shall open on signal on Thanksgiving Day, Christmas Day, New Year's Day, and Washington's Birthday. Moreover, the bridge must open for public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress.

The regulation governing the West Span of the Venetian Causeway bridge is published in 33 CFR 117.5 and requires the bridge to open on signal.

The operating schedule of the Brickell Avenue and Miami Avenue bridges is published in 33 CFR 117.305 and requires each bridge to open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels. Public vessels of the United States and vessels in an emergency involving danger to life or property are allowed to pass at any time.

We believe that this proposed rule would not adversely affect the reasonable needs of navigation due to the limited time the bridges would be in the closed position.

Discussion of Proposed Rule

The Coast Guard proposes to temporarily change the operating regulations of the East and West Spans of the Venetian Causeway bridges, and the Brickell Avenue and Miami Avenue bridges on February 2, 2003. This proposed rule would allow the East Span of the Venetian Causeway bridge to remain closed from 6:10 a.m. to 8:30 a.m. on February 2, 2003. The proposed rule would allow the West Span of the Venetian Causeway to remain closed from 6:15 a.m. to 9:20 a.m. on February 2, 2003. The Brickell Avenue bridge would be allowed to remain closed from 7:10 a.m. to 11:59 a.m. on February 2, 2003. The Miami Avenue bridge would be allowed to remain closed from 6:30 a.m. to 10 a.m. on February 2, 2003. Public vessels of the United States and vessels in distress shall be passed at anytime.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because preliminary data indicates that there have been limited numbers of requests for openings during these time periods and this proposed rule still provides for regular openings throughout the day.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the proposed rule will only be in effect for a limited period of time and race committee officials are working with affected parties to minimize the impact of this proposed rule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to

safety that might disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 6:15 a.m. until 9:20 a.m. on February 2, 2003, in § 117.261 add temporary paragraph (ss) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(ss) *West Span of the Venetian Causeway, mile 1088.6 at Miami.* The draw need not open from 6:15 a.m. until 9:20 a.m. on February 2, 2003. Public vessels of the United States and vessels in distress shall be passed at anytime.

3. From 6:10 a.m. until 8:30 a.m. on February 2, 2003, suspend § 117.269 and add a new temporary § 117.T151 to read as follows:

§ 117.T151 Biscayne Bay.

The draw of the East Span of the Venetian Causeway bridge across Miami Beach Channel need not open from 6:10 a.m. to 8:30 a.m. on February 2, 2003. Public vessels of the United States and vessels in distress shall be passed at anytime.

4. From 6:30 a.m. until 11:59 a.m. on February 2, 2003, suspend § 117.305 and add a new temporary § 117.T159 to read as follows:

§ 117.T159 Miami River.

The draw of each bridge from the mouth to and including the N.W. 27th Avenue bridge, mile 3.7 at Miami, except the Miami Avenue and Brickell Avenue bridges, shall open on signal: except that, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels. The Miami Avenue bridge, across the Miami River, need not open from 6:30 a.m. to 10 a.m. on February 2, 2003 and the Brickell Avenue bridge, across the Miami River, need not open from 7:10 a.m. to 11:59 a.m. on February 2, 2003. Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: December 13, 2002.

James S. Carmichael,

Rear Admiral, Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02–32140 Filed 12–19–02; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2002–5]

Notice of Termination

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: Commencing January 1, 2003, copyright owners or their statutory successors will be entitled, under certain circumstances prescribed by section 203 of the Copyright Act, to terminate transfers or licenses of copyright that were granted on or after January 1, 1978. The Copyright Office is proposing to adopt a regulation governing the form, content, and manner of service of notices of termination. The proposed regulation is based on the existing Copyright Office regulation governing termination of transfers and licenses covering the extended renewal term, and is adapted to meet the requirements for termination of post-1977 transfers and licenses.

DATES: Comments should be in writing and received on or before February 3, 2003. Reply comments should be received on or before March 5, 2003.

ADDRESSES: If sent *by mail*, 10 copies of written comments should be addressed to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20540. If *hand delivered*, 10 copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Prior to the effective date of the Copyright Act of 1976, the term of copyright was 28 years, subject to renewal by the author or certain other persons described in the statute for an additional 28 years. The second term was considered a new estate, meaning that with certain exceptions such as works made for hire, all rights reverted to the author at the commencement of the second term, and transfers or licenses of copyrights made during the initial 28-year term automatically terminated.[1] The 1976 Copyright Act abandoned the two-term system of copyright duration in favor of a unitary term, but it provided for two circumstances under which authors or their statutory successors could terminate transfers or licenses of rights.

First, because the 1976 Act added 19 years to the terms of existing copyrights, extending the renewal term from 28 years to 47 years, section 304(c) provides that authors or certain statutory successors (such as the surviving spouse, children and

[1] In *Fred Fisher Music Co.* v. *M. Witmark & Sons,* 318 U.S. 643 (1943), the Supreme Court significantly limited this rule by holding that authors could, during the initial term of copyright, assign renewal term rights and that such assignments would be valid during the renewal term if the author was alive at the commencement of the renewal term.

grandchildren or, if there are no such surviving relatives, the author's executor, administrator, personal representative, or trustee) may terminate pre 1978 [2] exculsive or non-exclusive grants of transfers or licenses during the extended renewal term and secure for themselves the benefits of the additional 19 years added to the renewal term. Termination may be effectuated by serving the grantee or the grantee's successor in title with a notice of termination (which may be served only during a period prescribed by the statute) and recording the notice of termination with the Copyright Office prior to the effective date of termination. 17 U.S.C. 304(c). Section 304(c)(4)(B) provides, ''The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.'' In 1977, the Copyright Office adopted a regulation establishing the procedures for exercising the termination right. 37 CFR 201.10. Pursuant to section 304(c) and 37 CFR 201.10, authors and their statutory successors have been serving notices of termination of transfers and licences, and filing those notices for recordation with the Copyright Office, for almost 25 years.[3]

Second, the 1976 Act provides that authors may terminate grants of transfers or licenses entered into after January 1, 1978. 17 U.S.C. 203. Unlike termination pursuant to section 304(c) and (d), termination pursuant to section 203 is available only when the grant was made by the author, but as with termination pursuant to section 304, certain statutory successors may terminate if the author is no longer alive at the time termination may be made. 17 U.S.C. 203(a)(2). Termination may be made during a five-year period commencing 35 years after the execution of the grant or, if the grant included the right of publication, the earlier of 35 years after publication pursuant to the grant or 40 years after the execution of the grant. 17 U.S.C. 203(a)(3). As with section 304 terminations, termination under section 203 is accomplished by serving a notice of termination on the grantee or the grantee's successor in title and recording the notice with the Copyright Office prior to the effective date of termination. The notice must be served no more than 10 years and no later than two years before the effective date of termination. 17 U.S.C. 203(a)(4)(A). As with section 304 terminations, ''The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.'' 17 U.S.C. 203(a)(4)(B).

The rationale for the section 203 termination right is similar to the rationale for the section 304 termination right. As the legislative history of section 203 states:

> The provisions of section 203 are based on the premise that the reversionary provisions of the present section on copyright renewal (17 U.S.C. 24) should be eliminated, and that the proposed law should substitute for them a provision safeguarding authors against unremunerative transfers. A provision of this sort is needed because of the unequal bargaining position of authors, resulting in part from the impossibility of determining a work's value until it has been exploited. Section 203 reflects a practical compromise that will further the objectives of the copyright law while recognizing the problems and legitimate needs of all interests involved.
>
> House Report on Copyright Act of 1976, H.R. Rep. No. 94–1476, at 124 (1976).

Because section 203 terminations may be made only with respect to grants made on or after January 1, 1978, and because notice of termination may be served no earlier than 25 years from the date of execution of the grant (which, in the earliest case, would be 10 years before the effective date of termination, which may be no earlier than 35 years from the date of execution of the grant),[4] no termination notices under section 203 have been possible between January 1, 1978, and the present. However, commencing January 1, 2003, certain authors and their statutory successors will be able to serve section 203 notices of termination, because on that date, 25 years will have passed since January 1, 1978.

Because notices of termination must comply with requirements prescribed in a regulation by the Register of Copyrights, it is now necessary to adopt a regulation that will set forth the requirements as to form, content and manner of service of section 203 notices of termination. Fortunately, the regulation governing section 304 notices of termination provides a model for a regulation governing section 203 notices. Because the statutory requirements for termination under section 304 are very similar to the statutory requirements for termination under section 203, we propose to adopt a regulation modeled closely on the existing section 304 regulation. *See* 37 CFR 201.10. In this notice of proposed rulemaking, we seek comments on the rules that we propose to adopt, which would amend § 201.10 to add requirements for section 203 notices of termination.[5]

Existing § 201.10 sets forth requirements governing the form and content of section 304 notices of termination, the signature on a notice of termination, the manner of service, the effect of harmless errors in the notice, and recordation of the notice. We propose to modify § 201.10(b), which governs the contents of a section 304 notice of termination, by adding a new subparagraph to govern the contents of a section 203 notice of termination. The new subparagraph adapts the content requirements of the existing regulation to meet the needs of section 203. Somewhat different treatment is also required for signatures of section 203 notices of termination. Beyond those changes, only minor revisions in the wording of various provisions are necessary in order to reflect the fact that notices of termination may be served under section 203.

Contents of the Notice

The first modification that we propose is an amendment to § 201.10(b)(1)(i). Currently, that subparagraph requires that if termination is being made under section 304(d)—the termination provision added by the Sonny Bono Copyright Term Extension Act—the notice must include a statement to that effect. The requirement that notices of termination under section 304(d) refer specifically to section 304(d) was added in the recent amendment of § 201.10, in order to distinguish such notices from notices served under section 304(c). No corresponding requirement was imposed for notices of termination issued under section 304(c) because such a requirement would have added a new requirement for such notices,

[2] The effective date of the Copyright Act of 1976 was January 1, 1978.

[3] The Sonny Bono Copyright Term Extension Act, (''the Act''), Pub. L. 105–298, 112 Stat. 2827 (1998), extended the renewal term by an additional twenty years and gave authors or their statutory successors a second opportunity to terminate transfers or licenses during the extended renewal term. 17 U.S.C. 304(d). Earlier this year, the Copyright Office amended 37 CFR 201.10 to adopt requirements for notices of termination pursuant to section 304(d). 67 FR 69134 (Nov. 15, 2002).

[4] Or, if the grant covered publication of the work, notice may be served no earlier than 30 years from the date of execution of the grant or 25 years from the date of publication under the grant. See the discussion above.

[5] Because of the time required to receive and consider comments from the public, it will not be possible to announce final regulations prior to January 1, 2003. However, because some authors or statutory successors may be able to and desire to serve notices of termination as early as January 1, 2003, we intend to publish an interim regulation shortly after publication of this notice of proposed rulemaking, and before January 1, 2003. The interim regulation will be virtually identical to the regulation proposed herein and will be in force pending the adoption of a final regulation.

which have been served since 1978, and might upset established legal practices in issuing notices under that section.

Because a third category of notice of termination—pursuant to section 203—is now available, we believe that it would be prudent to require all notices of termination—whether under section 203, 304(c) or 304(d)—to state which statutory provision is being invoked. Requiring such specification should assist in eliminating confusion over the nature of any notice of termination. Accordingly, we propose to amend § 201.10(b)(1)(i) to require that a notice of termination pursuant to section 304 must identify whether the termination is made under section 304(c) or section 304(d).[6]

We propose to add a new § 201.10(b)(2) to state the required contents of a section 203 notice of termination. The proposed requirements are very similar to the requirements for section 304 notices, departing from that model only in instances where the requirements of section 203 are different from the requirements of section 304. Section 201.10(b)(2)(i) would require that a notice of termination made under section 203 identify itself as such. Section 201.10(b)(2)(ii) would be identical to current § 201.10(b)(1)(ii), requiring identification of the name of each grantee (or successor in title) whose rights are being terminated, as well as the address at which service of the notice is being made.

Section 201.10(b)(2)(iii) would impose a requirement not found in the regulation governing section 304 notices of termination: identification of the date of execution of the grant being terminated and, if the grant covered the right of publication of a work, identification of the date of publication of the work under the grant. In contrast, current § 210.10(b)(ii) requires that a notice of termination under section 304 identify the date copyright was originally secured. When the original regulation was adopted, we explained that the latter requirement was being imposed because ''the period during which termination may be effected is measured from the date copyright was originally secured.'' Final Regulation, Termination of Transfers and Licenses Covering Extended Renewal Term, 42 FR 45916, 45917 (Sept. 13, 1977). Therefore, in order to determine whether a notice of termination was being served in a timely fashion, it was necessary to know the date the copyright in the pertinent work had been secured. In contrast, for section 203 terminations, the period is calculated based on the date the grant was executed or, in the case of grants covering the right of publication, the earlier of 40 years from the date of execution of the grant or 35 years from the date of publication. Accordingly, we propose that section 203 notices of termination state the date the grant was executed and, if a work was published under the grant, the date the work was published. Unlike section 304 terminations, terminations under section 203 present no need to state the date copyright was secured.

Current § 201.10(b)(ii) also requires that a section 304 notice of termination identify the title and at least one author of each work to which a notice applies, as well as the copyright registration number. However, the registration number must be provided only ''if possible and practicable.'' We propose to retain these requirements for section 203 notices of termination, but with one modification. In contrast to section 304, which permits each author (or the statutory successors of each author) of a work to terminate ''that particular author's share in the ownership of the renewal copyright'' (17 U.S.C. 304(c)(1)), section 203 requires that in the case of a grant executed by two or more authors of a joint work, termination may be effected by a *majority* of the authors who executed the grant (or, if an author is dead, by the persons such as the widow, children, *etc.,* identified in section 203(a)(2)). 17 U.S.C. 203(a)(1). As a result, we believe that when the grant being terminated was made by two or more authors of a joint work, a section 203 notice of termination should be required to identify all of the authors of that work who executed the grant.

When § 201.10 was originally adopted, we rejected a proposal that a section 304 notice of termination must identify all the authors of a work. That proposal was based on the assumption that it would be necessary ''to determine whether the proper parties have joined in the notice.'' 42 FR at 45917. We concluded that because section 304(c) does not require more than one coauthor to join in terminating a copyright transfer or license during the extended renewal term, such identification was unnecessary. ''[A] notice terminating a grant may be effected as to any particular author's share of the work. There is no requirement of unanimity, majority interest, or the like, among granting co-authors.'' *Id.* Therefore, identification of all co-authors ''has nothing to do with the effectiveness of a termination notice served by those authors (or their successors) who do wish to terminate rights in a work to the extent of their share.'' *Id.* at 45917–45918. In contrast, as noted above, a section 203 termination of a grant covering a joint work does require participation by at least a majority of the authors who executed the grant.

The final two current requirements relating to contents of section 304 notices of termination (a brief statement reasonably identifying the grant to which the notice of termination applies and identification of the effective date of termination) appear to be equally applicable to section 203 notices of termination, and we propose to retain them for purposes of section 203.

Signature

As noted above, termination under section 304 differs from termination under section 203 in that under section 304, each author of a joint work may terminate a grant ''to the extent of [that] particular owner's share.'' 17 U.S.C. 304(c)(1). In contrast, section 203 requires participation in the termination by a majority of the authors of a joint work. Because of these differing approaches, the current signature requirements for section 304 notices of termination cannot be applied to section 203 without modification. Section 201.10(c)(2) currently provides that in the case of a termination of a grant executed by one or more of the authors of a work, a notice ''as to any one author's share shall be signed by that author'' or his agent or statutory successors. We propose to add a new § 201.10(c)(3) to state the signature requirements for section 203 notices of termination. While these requirements are similar to the requirements stated in § 201.10(c)(2), the inapplicable reference to ''one author's share'' is deleted.

Comments

The Copyright Office solicits comments on the proposed regulation governing notices of termination under section 203. The Office also seeks comments on whether the Office should provide official forms for notices of termination of transfers and licenses under sections 203, 304(c) and 304(d), and whether the use of such forms should be made mandatory. Requiring the use of official forms might make it less likely that notices of termination that do not comply with the statutory and regulatory requirements will be served. It would also facilitate the Office's processing of notices of termination submitted for recordation.

[6] The interim regulation to be announced shortly will not include this amendment because we do not believe it would be prudent to change the requirements for section 304 notices of termination on such short notice. The interim regulation will be effective January 1, 2003.

Information on Copyright Office Website

The entire text of § 201.10 as it would appear after adoption of the proposed amendments may be found on the Copyright Office website at *http://www.copyright.gov/docs/203.html.*

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes amending part 201 of 37 CFR, chapter II as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.10 is amended as follows:

(a) By revising the section heading and the first sentence of the undesignated paragraph preceding paragraph (a).

(b) By revising paragraph (b)(1) introductory text.

(c) By revising paragraph (b)(1)(i).

(d) By revising paragraph (b)(1)(v).

(e) By revising paragraph (b)(1)(vii)(B).

(f) By redesignating paragraph (b)(2) as paragraph (b)(3); and adding a new paragraph (b)(2).

(g) By revising newly designated paragraph (b)(3).

(h) By revising paragraphs (c)(1) and (c)(2).

(i) By redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(4) and (c)(5), respectively; and adding a new paragraph (c)(3).

(j) By revising the introductory text of paragraph (d)(2).

(k) By revising paragraph (d)(4).

(l) By revising paragraph (e)(1).

(m) By revising paragraph (e)(2).

The additions and revisions to § 201.10 read as follows:

§ 201.10 Notices of termination of transfers and licenses.

This section covers notices of termination of transfers and licenses under sections 203, 304(c) and 304(d) of title 17, of the United States Code.

* * *

* * * * *

(b) * * *

(1) A notice of termination covering the extended renewal term under sections 304(c) and 304(d) of title 17, U.S.C., must include a clear identification of each of the following:

(i) Whether the termination is made under section 304(c) or under section 304(d);

* * * * *

(v) The effective date of termination;

* * * * *

(vii) * * *

(B) A statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under section 304 of title 17, U.S.C., or by their duly authorized agents.

(2) A notice of termination of an exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, under section 203 of title 17, U.S.C., must include a clear identification of each of the following:

(i) A statement that the termination is made under section 203;

(ii) The name of each grantee whose rights are being terminated, or the grantee's successor in title, and each address at which service of the notice is being made;

(iii) The date of execution of the grant being terminated and, if the grant covered the right of publication of a work, the date of publication of the work under the grant;

(iv) For each work to which the notice of termination applies, the title of the work and the name of the author or, in the case of a joint work, the authors who executed the grant being terminated; and, if possible and practicable, the original copyright registration number;

(v) A brief statement reasonably identifying the grant to which the notice of termination applies;

(vi) The effective date of termination; and

(vii) In the case of a termination of a grant executed by one or more of the authors of the work where the termination is exercised by the successors of a deceased author, a listing of the names and relationships to that deceased author of all of the following, together with specific indication of the person or persons executing the notice who constitute more than one-half of that author's termination interest: That author's surviving widow or widower; and all of that author's surviving children; and, where any of that author's children are dead, all of the surviving children of any such deceased child of that author; however, instead of the information required by this paragraph (vii), the notice may contain both of the following:

(A) A statement of as much of such information as is currently available to the person or persons signing the notice, with a brief explanation of the reasons why full information is or may be lacking; together with

(B) A statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under section 203 of title 17, U.S.C., or by their duly authorized agents.

(3) Clear identification of the information specified by paragraphs (b)(1) and (b)(2) of this section requires a complete and unambiguous statement of facts in the notice itself, without incorporation by reference of information in other documents or records.

(c) *Signature.* (1) In the case of a termination of a grant under section 304(c) or section 304(d) executed by a person or persons other than the author, the notice shall be signed by all of the surviving person or persons who executed the grant, or by their duly authorized agents.

(2) In the case of a termination of a grant under section 304(c) or section 304(d) executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 304(c) or section 304(d), whichever applies, of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

(3) In the case of a termination of a grant under section 203 executed by one or more of the authors of the work, the notice shall be signed by each author who is terminating the grant or by his or her duly authorized agent. If that authoris dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 203 of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

* * * * *

(d) * * *

(2) The service provision of section 203, section 304(c) or section 304(d) of title 17, U.S.C., whichever applies, will be satisfied if, before the notice of termination is served, a reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being

terminated, and based on such investigation:

* * * * *

(4) Compliance with the provisions of paragraphs (d)(2) and (3) of this section will satisfy the service requirements of section 203, section 304(c), or section 304(d) of title 17, U.S.C., whichever applies. * * *

(e) *Harmless errors.* (1) Harmless errors in a notice that do not materially affect the adequacy of the information required to serve the purposes of section 203, section 304(c), or section 304(d) of title 17, U.S.C., whichever applies, shall not render the notice invalid.

(2) Without prejudice to the general rule provided by paragraph (e)(1) of this section, errors made in giving the date or registration number referred to in paragraph (b)(1)(iii), (b)(2)(iii), or (b)(2)(iv) of this section, or in complying with the provisions of paragraph (b)(1)(vii) or (b)(2)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) or (c)(3) of this section, shall not affect the validity of the notice if the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.

* * * * *

Dated: December 17, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–32136 Filed 12–19–02; 8:45 am]

BILLING CODE 1410–30–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MS 23–1–200242(b); FRL–7424–4]

Approval and Promulgation of Implementation Plans for Mississippi: Infectious Waste Incinerator Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the Mississippi State Implementation Plan (SIP) modifying infectious waste incineration requirements to reflect current Emissions Guidelines approved in the State for existing hospital/medical/infectious waste incinerator units. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 21, 2003.

ADDRESSES: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Michele Notarianni, (40) 562–9031, *notarianni.michele@epa.gov)*Mississippi Department of Environmental Quality, Air Division, PO Box 10385, Jackson, Mississippi 39289–0385. (601) 961–5171)

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at address listed above or (404) 562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: December 2, 2002.

J. I. Palmer Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–31978 Filed 12–19–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 213

[DFARS Case 2002–D025]

Defense Federal Acquisition Regulation Supplement; Purchase Card Internal Controls

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy on internal controls for proper use of the Governmentwide commercial purchase card.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before February 18, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2002–D025 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D025.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, (703) 602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule revises DFARS subpart 213.3 to add policy on internal controls for proper use of the Governmentwide commercial purchase card and convenience checks. The rule implements recommendations made by the DoD Charge Card Task Force, in its final report dated June 27, 2002, to strengthen management of the purchase card program.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains primarily to internal DoD procedures for use of the Governmentwide commercial purchase card and convenience checks. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002-D025.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 213

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 213 as follows:

1. The authority citation for 48 CFR part 213 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 213.301 is revised to read as follows:

213.301 Governmentwide commercial purchase card.

(1) Only formally appointed and trained cardholders are authorized to use the purchase card.

(2) Do not split requirements exceeding the micro-purchase threshold or the cardholder's single purchase limit into several purchases that are less than the applicable threshold in order to use the purchase card (*see* FAR 13.003(c)).

(3) Do not use the purchase card to issue a task or delivery order that exceeds the cardholder's single purchase limit.

(4) When ordering against a Federal Supply Schedule—

(i) Comply with the requirements of FAR 8.404 and 208.404; and

(ii) Retain best value documentation with the cardholder's purchase card file.

(5) When ordering against a blanket purchase agreement, comply with the requirements of FAR 13.303–5.

(6) For each order exceeding $2,500, comply with the reporting requirements of subpart 204.6.

(7) Do not issue purchase cards to contractors. Under certain conditions, GSA can authorize contractors to establish cards directly with the issuing bank. Refer contractors that ask for a card to GSA. A listing of GSA points of contact can be found on the Internet at: *http://www.gsa.gov/Portal/content/offerings_content.jsp?contentOID=119199&contentType=1004.*

3. Sections 213.301–70 through 213.301–72 are added to read as follows:

213.301–70 DoD Governmentwide commercial purchase card program responsibilities.

(a) The DoD Purchase Card Program Management Office administers the DoD Governmentwide commercial purchase card program on behalf of the Director of Defense Procurement and Acquisition Policy. Specific procedures and guidelines for the program can be found in the following documents:

(1) DoD 7000.14–R, Financial Management Regulation, volume 10, chapter 10, section XXXX, available on the Internet at *http://www.dtic.mil/comptroller/fmr.*

(2) DoD Purchase Card Concept of Operations, available on the Internet at *http://purchasecard.saalt.army.mil/ConOps,%2031%20Jul%2002.pdf.*

(b) Agency heads are responsible for ensuring that management controls are in place for proper use of the card. Local commanders are responsible for ensuring that the local purchase card program maintains internal controls that support proper use of the card.

(c) The penalties for purchase card misuse or abuse by civilian or military members may include, but are not limited to, reprimand, dismissal, and/or imposition of fines or other criminal penalties.

213.301–71 Overseas use of the Governmentwide commercial purchase card.

(a) ''United States,'' as used in this section, means the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, Wake Island, Johnston Island, Canton Island, the outer Continental Shelf lands, and any other place subject to the jurisdiction of the United States (but not including leased bases).

(b) An individual appointed in accordance with 201.603–3(b) also may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed $25,000, if—

(1) The purchase—

(i) Is made outside the United States for use outside the United States; and

(ii) Is for a commercial item; but

(iii) Is not for work to be performed by employees recruited within the United States;

(iv) Is not for supplies or services originating from, or transported from or through, sources identified in FAR Subpart 25.7;

(v) Is not for ball or roller bearings as end items;

(vi) Does not require access to classified or Privacy Act information; and

(vii) Does not require transportation of supplies by sea; and

(2) The individual making the purchase—

(i) Is authorized and trained in accordance with agency procedures;

(ii) Complies with the requirements of FAR 8.001 in making the purchase; and

(iii) Seeks maximum practicable competition for the purchase in accordance with FAR 13.104(b).

(c) A contracting officer supporting a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8) also may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold, if—

(1) The supplies or services being purchased are immediately available;

(2) One delivery and one payment will be made; and

(3) The requirements of paragraphs (b)(1) and (2) of this subsection are met.

213.301–72 Convenience checks.

(a) Convenience check purchases are subject to the same policies and responsibilities as are applicable to the Governmentwide commercial purchase card. See the DoD Financial Management Regulation, volume 10, chapter 10, section XXXX, for the procedures for convenience check purchases.

(b) Use a convenience check only when—

(1) The amount of the purchase is $2,500 or less (however, *see* the DoD Financial Management Regulation, volume 10, chapter 10, section XXXX, for overseas contingency use);

(2) Use of the Governmentwide commercial purchase card is not feasible;

(3) Maximum efforts have been made to find and use vendors that accept the Governmentwide commercial purchase card;

(4) All alternatives to accomplish the same purpose have been evaluated; and

(5) A convenience check has been determined to be the most advantageous method of purchase.

(c) Write convenience checks only for the amount of the purchase.

[FR Doc. 02–31948 Filed 12–19–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 120302D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS)

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs that would allow three vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFPs would exempt these vessels from minimum mesh size requirements of the Gulf of Maine (GOM) Regulated Mesh Area (RMA), days-at-sea (DAS) requirements, and the restrictions of GOM Rolling Closure Areas IV and V. The proposed experiment would consist of a codend mesh selectivity study in the GOM RMA. This study would test four codends, two single and two composite, designed to accommodate new mesh-size regulations in various configurations. All experimental work would be monitored by Manomet Center for Conservation Sciences (Manomet) personnel. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before January 6, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Manomet Codend Mesh Selectivity EFP Proposal.'' Comments may also be sent via fax to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the environmental assessment prepared for the proposed study are available from the NE Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, 978–281–9103.

SUPPLEMENTARY INFORMATION: A complete application for an EFP was received from Manomet on November 4, 2002. The EFPs would allow for exemptions from the GOM RMA minimum mesh size requirements specified at 50 CFR 648.80(a)(3)(i), DAS requirements specified at § 648.82(a), and the restrictions of GOM Rolling Closure Areas IV and V specified at § 648.81(g).

This industry collaborative study involves Manomet and the Massachusetts Division of Marine Fisheries as co-principal investigators. The proposed experimental fishery would test the mesh selectivity of single and composite mesh codends in the GOM RMA. The objective of the proposed study is to address bycatch and discard of non-target and sub-legal sized fish in the GOM groundfish otter trawl fishery. The proposed study would test four codends, two single and two composite, designed to accommodate new mesh-size regulations in various configurations. The four proposed codend configurations are: (1) A codend constructed entirely of 6.5–inch (16.5–cm) diamond mesh; (2) a codend constructed entirely of 7–inch (17.8–cm) square mesh; (3) a codend constructed with 7–inch (17.8–cm) square mesh in the upper panel and 6.5–inch (16.5–cm) diamond mesh in the lower panel; and (4) a codend constructed with 7–inch (17.8–cm) square mesh in the upper panel and 7–inch (17.8–cm) diamond mesh in the lower panel. Each codend would be covered with a small mesh (3–inch (7.6–cm)) codend cover in order to gather information on the length frequency of the population sampled versus the length frequency of the population retained. Selectivity curves for each test codend could then be generated using this information.

The proposed study area would consist of that portion of the GOM RMA encompassed by a line beginning at the Maine shoreline at 69o W. long., extending southward to the 42o30' N. lat. and then westward to the 70o W. long., and then southward to the Cape Cod shoreline, excluding the year-round Cashes Ledge and Western Gulf of Maine closure areas.

Data from previous studies showed that codends do not perform in the same manner in all areas at the same time, likely due to differences in water temperatures and conditions throughout the year. Therefore, in order to account for potential variations due to location and time of year, the proposed study area would be divided into three areas of operation (North, Center and South), and the study would be conducted over three different months (February, June and November), also referred to as seasons. The study is proposed to begin in February 2003, and be completed by November 30, 2003.

In order for the participating vessels to operate in three separate areas during the months of February, June and November, these vessels must be exempt from GOM Rolling Closure Area IV and Rolling Closure Area V. Rolling Closure Area IV is in effect from June 1 - June 30, 2003, and Rolling Closure Area V is in effect from October 1 - November 30, 2003. If participating vessels were not exempt from these seasonal closure areas, only the Center area could be sampled during all three seasons, while the North and South areas could be sampled for two seasons each. As a result, the ability to compare results across seasons and areas would be severely impacted if access to the GOM rolling closure areas were not authorized.

A maximum of three vessels would be participating in the experimental fishery at any time. One additional vessel would be designated as an alternate. The three participating vessels would conduct one concurrent trip per season, with each vessel operating in a different area of operation, North, Center, or South. Each vessel would conduct eight tows of 20 minutes in duration with each of the four codend types, for a total of 32 tows per vessel per season, and a total of 288 tows for the entire study. Each concurrent trip would last four operational sea days, resulting in a total of 36 sea days for the entire study. Therefore, participating vessels would be exempt from a total of 36 DAS. Participating vessels would not engage in any other fishing activities other than the experimental tows while operating under an exempted DAS. The four operational sea days would provide Manomet staff with sufficient time to process catch between hauls and re-rig

the vessels for each of the four test codends, and would also provide for additional time in case of bad weather. Depending on the distance of the study area from port, weather conditions, and other logistical factors, participating vessels could re-rig for each test codend at sea, or could return to port for re-rigging. Participating vessels would be required to notify NMFS prior to commencing an experimental fishing trip.

Target species would include cod, haddock, yellowtail flounder, American plaice, witch flounder, pollock, and windowpane flounder. The primary incidental species are expected to be skate, smooth dogfish, spiny dogfish, sculpins, sea raven and sea robin. All biological and environmental information would be recorded by trained observers (supplied by Manomet) on relevant NMFS observer logbooks. Each participating vessel would have two observers on board. All catch would be sorted and weighed on board the vessel. In addition, all commercially important species would be measured. All species that do not meet minimum size requirements would be returned to the sea immediately following scientific processing. Therefore, no undersized fish would be retained on board the vessel. A final report containing the results of the study would be provided to NMFS no later than 6 months following completion of the study.

All vessels participating in the proposed experimental fishery would be required to abide by existing trip limits for cod and haddock. Current regulations restrict vessels fishing in the GOM to landing no more than 500 lb (226.8 kg) of cod per DAS, up to a maximum of 4,000 lb (1,814.4 kg) per trip. Vessels would also be restricted to landing 3,000 lb (1,360.8 kg) of haddock per DAS, up to a maximum of 30,000 lb (13,607.8 kg), during the months of May through September, and 5,000 lb (2,268 kg) per DAS, up to a maximum of 50,000 lb (22,679.6 kg), during the months of October through April. Because each vessel is expected to utilize four sea days each season, these vessels would be limited to landing a maximum of 2,000 lb (907.2 kg) of cod each trip, and 12,000 lb (5,443.1 kg) of haddock during the November and February trips, and 20,000 lb (9,071.8 kg) of haddock during the June trips. If the Regional Administrator projects that less than 75 percent of the target total allowable catch for haddock will be harvested by the end of the fishing year, NMFS may waive the daily haddock trip limit as authorized under § 648.86(a)(1)(iii)(B). If the daily haddock trip limit is waived, participating vessels would be authorized to land the maximum haddock trip limit.

A draft environmental assessment (EA) has been prepared that analyzes the impacts of the proposed experimental fishery on the human environment. This draft EA concludes that the proposed activities to be conducted under the requested EFPs are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The draft EA also concludes that the proposed experimental fishery would not be detrimental to Essential Fish Habitat, marine mammals, or protected species.

EFPs would be issued to up to four vessels (three participating plus one alternate), exempting them from the DAS requirements, and specific minimum mesh size requirements and GOM rolling closure area restrictions of the FMP.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 13, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–32147 Filed 12–19–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 245
Friday, December 20, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–090–4]

Recognition of Animal Disease Status of Regions in the European Union; Availability of Environmental Assessments and Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are informing the public that the Animal and Plant Health Inspection Service has prepared two environmental assessments for a proposal to do the following: (1) Recognize a region in the European Union as a region in which hog cholera (classical swine fever) is not known to exist, and from which breeding swine, swine semen, and pork and pork products may be imported into the United States under certain conditions; and (2) recognize Greece and certain Regions in Italy as free of swine vesicular disease. The environmental assessments document our review and analysis of environmental impacts associated with the proposal. We are making these environmental assessments available to the public for review and comment.

DATES: We invite you to comment on the environmental assessments. We will consider all comments that we receive on or before January 21, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98-090–4, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–090–4. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 98–090–4'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Assistant Director, Sanitary Trade Issues Team, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

On June 25, 1999, we published in the **Federal Register** (64 FR 34155–34168, Docket No. 98–090–1) a proposal to amend the regulations by recognizing—with the exception of specified areas in Germany and Italy—the countries of Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, and Spain as a region in which hog cholera (classical swine fever (CSF)) is not known to exist, and from which breeding swine, swine semen, and pork and pork products may be imported into the United States under certain conditions.

We also proposed to add Greece and eight Regions in northern Italy to the list of regions recognized as free of swine vesicular disease (SVD). Additionally, we proposed to add Greece and the eight Regions in Italy to the list of SVD-free regions whose exports of pork and pork products to the United States are subject to certain restrictions because those regions either supplement their national pork supply with fresh (chilled or frozen) meat of animals from a region where SVD is considered to exist, have a common border with such regions, or conduct certain trade practices that are less restrictive than are acceptable to the United States.

In our proposed rule, we stated that we were preparing an environmental assessment in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). We also stated that when the environmental assessment was completed, we would inform the public through a notice in the **Federal Register** that it was available.

This notice announces the availability of two environmental assessments for public review and comment. They are titled ''Proposed Rule for Importation of Live Swine, Swine Semen, and Pork and Pork Products from Certain Regions Within the European Union, Environmental Assessment,'' dated October 2002; and ''Proposed Rule for Importation of Pork and Pork Products from Greece and Certain Regions of Italy, Environmental Assessment,'' also dated October 2002. The environmental assessments do not take into consideration any regions that had an outbreak of either CSF or SVD following publication of the June 1999 proposed rule and for which, consequently, import restrictions due to CSF or SVD would not be removed.

The environmental assessments may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/vsdocs.html.* You may request paper copies of the environmental assessments

from the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessments when requesting copies. The environmental assessments are also available for review in our reading room (the location and hours of the reading room are listed under the heading **ADDRESSES** at the beginning of this notice).

Done in Washington, DC, this 16th day of December 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–32059 Filed 12–19–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–118–1]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

DATES: The General Conference Committee will meet on January 22, 2003, from 1:30 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Georgia World Congress Center, Building B, Room 408, 285 Andrew Young International Boulevard, NW., Atlanta, GA.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health.

The topic of discussion at the meeting will be the development of a low pathogenic avian influenza surveillance program for the commercial table egg, broiler, and turkey industries.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the discussions during the meeting. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No. 02–118–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 17th day of December, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–32058 Filed 12–19–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of Currently Approved Information Collections

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request and extension for, and revision to, currently approved information collections in support of the Foreign Market Development Cooperation (Cooperator) Program and the Market Access Program (MAP) based on re-estimates.

DATES: Comments on this notice must be received by February 18, 2003.

ADDITIONAL INFORMATION OR COMMENTS: Contact Director, Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1042, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Title: Foreign Market Development Cooperator Program and Market Access Program.

OMB Number: 0551–26 and 0551–0027, respectively. These will be combined into OMB Number 0551–0026 if this request is approved.

Expiration Date of Approval: March 31, 2003, for the Foreign Market Development Cooperator Program and June 30, 2003, for the Market Access Program.

Type of Request: Extension and revision of currently approved information collections, with change to combine 0551–0026 (Foreign Market Development Cooperator Program) and 0551–0027 (Market Access Program).

Abstract: The primary objective of the Foreign Market Development Cooperator Program and the Market Access Program is to encourage and aid in the creation, maintenance and expansion of commercial export markets for U.S. agricultural products through cost-share assistance to eligible trade organizations. The programs are a cooperative effort between CCC and the eligible trade organizations. Currently, there are about 70 organizations participating directly in the programs with activities in more than 100 countries.

Prior to initiating program activities, each Cooperator or MAP participant must submit a detailed application to Foreign Agricultural Service (FAS) which includes an assessment of overseas market potential; market or country strategies, constrains, goals and benchmarks; proposed market development activities; estimated budgets; and performance measurements. Prior years' plans often dictate the content of current year plans because many activities are continuations of previous activities. Each Cooperator or MAP participant is also responsible for submitting: (1) Reimbursement claims for approved costs incurred in carrying out approved activities, (2) an end-of-year contribution report, (3) travel reports, and (4) progress reports/evaluation studies. Cooperators, or MAP participants must maintain records on all information submitted to FAS. The information collected is used by FAS to manage, plan, evaluate and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 21 hours per response.

Respondents: Non-profit trade organizations, state groups, cooperatives, and commercial entities.

Estimated Number of Respondents: 71.

Estimated Number of Responses per Respondent: 62.

Estimated Total Annual Burden on Respondents: 91,442 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Request for Comments: Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to: Director, Marketing Operations Staff, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250–1042. Facsimile submissions may be sent to (202) 720–9361 and electronic mail submissions should be addressed to: *mosadmin@fas.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, December 16, 2002.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 02–32120 Filed 12–19–02; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent To Establish an Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations at 5 CFR part 1320, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request approval to establish an information collection for the CSREES proposal review process.

DATES: Written comments on this notice must be received by February 24, 2003, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments concerning this notice may be mailed to Robert C. MacDonald, Grants Policy Program Leader, Information Systems and Technology Management, CSREES, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216 or sent electronically to: *rmacdonald@reeusda.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection, contact Robert C. MacDonald, (202) 205–5967.

SUPPLEMENTARY INFORMATION:

Title: CSREES Proposal Review Process.

OMB Number: 0524–NEW.

Expiration Date of Current Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for three years.

Abstract: The Cooperative State Research, Education and Extension Service (CSREES) is responsible for performing a review of proposals submitted to CSREES competitive award programs in accordance with section 103(a) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(a). Reviews are undertaken to ensure that projects supported by CSREES are of high quality, and are consistent with the goals and requirements of the funding program.

Proposals submitted to CSREES undergo a programmatic evaluation to determine worthiness of Federal support. The evaluations consist of a peer review and may also entail an assessment by Federal employees and mail-in reviews.

The information collected from the evaluations is used to support CSREES grant programs. CSREES uses the results of the proposal evaluation to determine whether a proposal should be declined or recommended for award. When CSREES has rendered a decision, copies of reviews, excluding the names of the reviewers, and summaries of review panel deliberations, if any, are provided to the submitting Project Director. Listings of panelists' names are released; however, no association is made with the review of an individual proposal.

Estimate of Burden: CSREES estimates that anywhere from one hour to twenty hours may be required to review a proposal. It is estimated that approximately five hours are required to review an average proposal. Each proposal receives an average of four reviews.

Copies of this information collection can be obtained from Robert C. MacDonald, Grants Policy Program Leader, Information Systems and Technology Management, CSREES, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216. Telephone (202) 205–5967. E-mail: *rmacdonald@reeusda.gov.*

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Done in Washington, DC, this 10th day of December, 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–32057 Filed 12–19–02; 8:45 am]

BILLING CODE 3410–22–U

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Modoc County RAC Meeting

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Modoc National Forest's Modoc County Resource Advisory Committee will meet Wednesday, January 8, 2003, in Alturas, California for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting January 8, begins at 4 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of November 13 minutes, reports from subcommittees, and discussion of potential projects for fiscal year 2004 that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve health and water quality that meet the intent of Public Law 106–393. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION: Contact Kathleen A. Jordan, Acting Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Kathleen A. Jordan,

Acting Forest Supervisor.

[FR Doc. 02–32047 Filed 12–19–02; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received On or Before: January 19, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Chemical Latrine Rental Servicing Vault Latrine Servicing, Fort Lewis & Yakima Training Center, Fort Lewis, Washington
NPA: Skookum Educational Programs, Port Townsend, Washington
Contract Activity: Directorate of Contracting, Fort Lewis, Washington

Service Type/Location: Facilities Maintenance, Greater Louisville Technology Park, Port Hueneme Detachment and Navy Caretaker Site Office, Louisville, Kentucky
NPA: Employment Source, Inc., Fayetteville, North Carolina
Contract Activity: Naval Surface Warfare Center, Crane, Indiana

Service Type/Location: Janitorial/Custodial, 183rd Fighter Wing Air National Guard, Capitol Airport, Springfield, Illinois
NPA: Challenge Unlimited, Inc., Alton, Illinois
Contract Activity: 183rd Fighter Wing/Air National Guard, Springfield, Illinois

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Blacklick, Ohio
NPA: Licking-Knox Goodwill Industries, Inc., Newark, Ohio
Contract Activity: HQ, 88th Regional Support Command, Fort Snelling, Minnesota

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Columbus, Ohio
NPA: Licking-Knox Goodwill Industries, Inc., Newark, OhioContract Activity: HQ, 88th Regional Support Command, Fort Snelling, Minnesota

Service Type/Location: Janitorial/Custodial, U.S. Geological Survey, Great Lakes Science Center, Ann Arbor, Michigan
NPA: Work Skills Corporation, Brighton, Michigan
Contract Activity: U.S. Geological Survey, Reston, Virginia

Service Type/Location: Janitorial/Custodial, U.S. Geological Survey, Upper Midwest, Environmental Science Center, La Crosse, Wisconsin
NPA: Riverfront Activity Center, Inc., La Crosse, Wisconsin
Contract Activity: U.S. Geological Survey, Reston, Virginia

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Pallet, P.S., Material Handling 3990–00-NSH–0008
NPA: Handi-Shop Industries, Inc., Tomah, Wisconsin
Contract Activity: U.S. Postal Service, Western AreaSupply Center, Topeka, Kansas

Product/NSN: Pallet, Wood 3990–00–NSH–0072
NPA: Handi-Shop Industries, Inc., Tomah, Wisconsin
Contract Activity: Federal Prison Industries, Washington, DC

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–32145 Filed 12–19–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: January 19, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D, Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On June 28, August 30, September 13, September 20, October 4, October 18, October 25, and November 8, 2002, the

Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 43582, 55776, 58014, 59249, 62224, 64351, 65531 and 68091) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Dual Head Stethoscope 6515–00–NIB–0115
NPA: Central Association for the Blind & Visually Impaired, Utica, New York
Contract Activity: Veterans Affairs National Acquisition Center, Hines, Illinois

Product/NSN: Flashlight, Aluminum
6230–00–NIB–0004 (2AA, Black)
6230–00–NIB–0005 (2AA, Blue)
6230–00–NIB–0006 (2AA, Red)
6230–00–NIB–0007 (2AA, Silver)
6230–00–NIB–0008 (2D, Black)
6230–00–NIB–0009 (2D, Blue)
6230–00–NIB–0010 (2D, Red)
6230–00–NIB–0011 (2D, Silver)
6230–00–NIB–0012 (3D, Black)
6230–00–NIB–0013 (3D, Blue)
6230–00–NIB–0014 (3D, Red)
6230–00–NIB–0015 (3D, Silver)
6230–00–NIB–0016 (4D, Black)
6230–00–NIB–0017 (4D, Blue)
6230–00–NIB–0018 (4D, Red)
6230–00–NIB–0019 (4D, Silver)
6230–00–NIB–0020 (5D, Black)
6230–00–NIB–0021 (5D, Blue)
6230–00–NIB–0022 (5D, Red)
6230–00–NIB–0023 (5D, Silver)
NPA: Central Association for the Blind & Visually Impaired, Utica, NY
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, NY

Services

Service Type/Location: Base Supply Center, Federal Law Enforcement Training Center, Brunswick, Georgia
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina
Contract Activity: Federal Law Enforcement Training Center (FLETC)

Service Type/Location: Janitorial/Custodial, Army Reserve Center (Fort Harrison), Indianapolis, Indiana
NPA: Child-Adult Resource Services, Inc., Green Castle, Indiana
Contract Activity: HQ, 88th Regional Support Command, Fort Snelling, Minnesota

Service Type/Location: Laundry Service, Andrews Air Force Base, Maryland
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia
Contract Activity: 89th Contracting Squadron, Andrews AFB, Maryland

Service Type/Location: Lawn Service Naval Reserve Center, Cleveland, Ohio
NPA: Goodwill Industries of Greater Cleveland, Inc., Cleveland, Ohio
Contract Activity: Officer in Charge of Contracts, NAVFAC, Crane, Indiana

Service Type/Location: Personal Environmental Protection & Survival Equipment Warehousing and Distribution Services, U.S. Army Natick Research Development & Engineering Center, Natick, Massachusetts
NPA: Peckham Vocational Industries, Inc., Lansing, Michigan
Contract Activity: U.S. Army Natick Soldier Center, Natick, Massachusetts

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Pencil, Mechanical
7520–00–285–5822
7520–00–285–5823
7520–00–285–5826
NPA: San Antonio Lighthouse, San Antonio, Texas
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–32146 Filed 12–19–02; 8:45 am]

BILLING CODE 6353–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2002–3]

Requirements for the Design, Implementation, and Maintenance of Administrative Controls

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) concerning requirements for the design, implementation, and maintenance of administrative controls.

DATES: Comments, data, views, or arguments concerning the recommendation are due on or before January 21, 2003.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Andrew L. Thibadeau at the address above or telephone (202) 694–7000.

Dated: December 16, 2002.

John T. Conway,

Chairman.

Background

The implementation of an effective and reliable set of controls is one of the most important cornerstones of safe operation at defense nuclear facilities. In this context, the term ''control'' refers to those structures, systems, and components (SSCs) and administrative controls that prevent or mitigate undesirable consequences of postulated accident scenarios. The Defense Nuclear Facilities Safety Board (Board) has

compiled a set of observations that are particularly relevant to the development and implementation of administrative controls in the Department of Energy's (DOE) defense nuclear complex. The results of these reviews and observations are summarized in this recommendation.

It has been well recognized that administrative controls play an important role in establishing and maintaining overall safety of nuclear activities. Previous technical reports issued by the Board have underscored the need for heightened vigilance in the selection and implementation of task-specific administrative controls, as well as those of a more programmatic nature (*e.g.*, criticality control programs). In particular, in DNFSB/TECH–28, Safety Basis Expectations for Existing Department of Energy Defense Nuclear Facilities and Activities (October 2000), the Board observed the need for DOE to promulgate additional guidance in this area. However, DOE has taken little action to provide the degree of specificity necessary to properly design, implement, and monitor the effectiveness of important administrative controls.

Administrative controls have been defined in the DOE Nuclear Safety Management rule as, ''* * * the provisions relating to the organization, management, procedures, recordkeeping, assessment, and reporting necessary to ensure safe operation of a facility.'' 10 CFR 830.3(a). In practice, however, the concept of an administrative control is used more broadly in the context of hazard prevention and mitigation. In this regard, an administrative control can be viewed as an extension of a hazard control and defined accordingly. Thus from a broader and more operational perspective, some administrative controls should be treated similarly to engineered or design features that are used to eliminate, limit, or mitigate potential hazards.

DOE has promulgated guidance to assist facilities in the classification of controls. In general, controls necessary to prevent or mitigate significant consequences to the public are classified as ''safety-class'' and controls which contribute significantly to defense-in-depth or worker safety are classified as ''safety-significant.'' However, this guidance has been directed primarily at engineered controls and has been largely silent with respect to the functional classification of administrative controls. The Board has observed a number of instances in which administrative controls have been implemented in situations where a corresponding engineered feature would warrant functional classification as either safety-significant or safety-class. A number of defense nuclear facilities have explicitly characterized certain administrative controls as either safety-class or safety-significant from a functional classification perspective in the context of existing DOE guidance.

In addition to controls involving discrete operator actions, a number of administrative controls are more programmatic in nature. Examples of such programmatic controls include combustible loading programs (associated with fire protection programs), operator training programs, and inservice inspection programs. The Board has observed a number of instances, similar to the examples involving specific operator actions, in which such programmatic controls are credited for the prevention and mitigation of specific hazard scenarios.

Weaknesses in the Implementation of Important Administrative Controls

The Board has observed that the development and implementation of important administrative controls have not always conformed to the expectations and quality standards that would be applied to corresponding safety-class engineered features. The following examples illustrate this point:

1. During a review of the process controls for a new aqueous recovery line for plutonium 238 (Pu-238) at Los Alamos National Laboratory (LANL), the Board found that the facility had placed heavy reliance on administrative controls in lieu of engineered controls. However, LANL had not planned to incorporate many of these administrative controls, some of which were safety-related, into Technical Safety Requirements (TSRs) prior to the startup of the Pu-238 recovery process. Examples include procedural controls on the makeup of strong acids used to elute ion exchange resin and procedural controls designed to monitor for resin dryout. Strong acids can react violently with the ion exchange resin, and resin dryout can also lead to energetic reactions. These concerns were communicated to DOE in a Board letter dated April 23, 2002.

2. During a review at the Y–12 National Security Complex, the Board noted that the fire protection program for Building 9212 B–1 Wing identified 21 administrative controls needed to protect the facility during testing and process restart. These administrative controls include operational considerations in the use of organic solvents, a transient combustible control program, control of ignition sources, and designated laydown areas for combustible materials. The Board determined that the various administrative controls were not always updated or modified to reflect changes in plans or equipment, and that there were significant deficiencies in the contractor's compliance with these controls. Most important, there was no program providing for a periodic review to verify that the administrative controls associated with B–1 Wing remained fully effective. Significantly, many of these administrative controls could be supplanted by the installation of an engineered control-a fire suppression system. These issues were communicated to DOE in a letter from the Board dated May 13, 2002.

3. At the Savannah River Site, the safety analysis for HB-Line Phase 2 operations contains requirements for strict control of combustibles in rooms 410N and 410S to protect the process tanks in the area. The controls limit the total quantity of combustibles to 400 pounds wood equivalent and specify separation distances between combustibles and tank supports. However, the transient combustible control procedure did not include this portion of HB-Line, indicating that this administrative control was not complete. Further, a review by Westinghouse Savannah River Company (WSRC) indicated that the quantity of combustibles in the area may actually be as high as 5,670 pounds wood equivalent, providing sufficient fuel to produce a high-temperature (1200°C) flashover fire in the area and boil off the tank contents. As a result, it was determined that combustible control was no longer a viable administrative control for this area. Instead, WSRC has implemented an additional administrative control to limit the concentration of plutonium in the tanks to 5.5 grams per liter to prevent unacceptable consequences of a fire in this area. The details of these issues were documented in a letter from the Board dated July 20, 2001.

Recommendation

The development, selection, and implementation of an effective set of hazard controls are among the most important elements of nuclear safety. At defense nuclear facilities, DOE has established a priority system that favors preventive over mitigative measures, and passive design features over active controls. The approved system recognizes that, where necessary or practical, administrative controls may play an important role in hazard prevention and mitigation.

In the Board's view, the activities associated with the development, implementation, and ongoing verification and validation of safety-class and safety-significant administrative controls should be conducted with the same degree of rigor and quality assurance as that afforded engineered controls or design features with similar safety importance. Therefore, the Board recommends the following:

1. DOE should promulgate a set of requirements for safety-class and safety-significant administrative controls to establish appropriate expectations for the design, implementation, and maintenance of these important safety controls. The requirements should address the following at a minimum:

(a) Specific design attributes to ensure effectiveness and reliability;

(b) Specific TSRs and limiting conditions of operation;

(c) Specific training and qualifications to ensure that the appropriate facility operators, maintenance and engineering personnel, plant management, and other staff properly implement each control;

(d) Periodic reverification that each control remains effective; and

(e) Root cause and failure analyses, similar to those required upon failure of an engineered system.

2. DOE should ensure that all existing administrative controls that serve the function of a safety-class or safety-significant control are evaluated against these new requirements and upgraded as necessary and appropriate to meet DOE's expectations.

John T. Conway,
Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

Defense Nuclear Facilities Safety Board

December 11, 2002.

The Honorable Spencer Abraham,
Secretary of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1000.

Dear Secretary Abraham: The prevention and mitigation of potential accidents inherent in the mission activities at defense nuclear facilities is a fundamental objective of both the Department of Energy (DOE) and the Defense Nuclear Facilities Safety Board (Board). This objective requires DOE and its contractors to identify accident scenarios and then establish effective and reliable safety controls to address them. Engineered controls are preferred over administrative controls because, in general, engineered controls are considered to be more reliable and effective than administrative controls. However, in certain applications, DOE and its contractors have concluded that discrete operator actions or administrative controls are required to address consequences of accidents that would otherwise be unacceptable.

The Board agrees with DOE's overall guidance for a hierarchy of controls and agrees that administrative controls are sometimes appropriate to prevent or mitigate accident consequences—even those that exceed evaluation guidelines for risk to the public. However, the Board has identified a number of administrative safety controls, proposed or in use, at various defense nuclear facilities that are technically inadequate. In many cases, DOE and/or its contractors have asserted that the methods used to establish these administrative controls comply with existing DOE directives. After further analysis, the Board has concluded that the DOE directives system does not contain adequate requirements for the design, implementation, and maintenance of important safety-related administrative controls to ensure that they will be effective and reliable.

As a result, the Board on December 11, 2002, unanimously approved Recommendation 2002–3, Requirements for the Design, Implementation, and Maintenance of Administrative Controls, which is enclosed for your consideration. After your receipt of this recommendation and as required by 42 U.S.C. 2286d(a), the Board will promptly make it available to the public. The Board believes that the recommendation contains no information that is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please see that it is promptly placed on file in your regional public reading rooms. The Board will also publish this recommendation in the **Federal Register**. The Board will evaluate the Department of Energy response to this recommendation in accordance with Board Policy Statement 1, Criteria for Judging the Adequacy of DOE Responses and Implementation Plans for Board Recommendations.

Sincerely,
John T. Conway,
Chairman.

[FR Doc. 02–32033 Filed 12–19–02; 8:45 am]
BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 21, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren.Whittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 16, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: FSA Students Portal Web site.

Frequency: On occasion, monthly, annually.

Affected Public: Individuals or household; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 5,000,000.

Burden Hours: 200,000.

Abstract: Federal Student Aid (FSA) of the U.S. Department of Education seeks to establish a registration system within the ''Students Portal'', an Internet Portal Web site (hereafter ''the Web site'') The Web site will make the college application process more efficient, faster, and accurate by making it an automated, electronic process that targets financial aid and college applications. The Web site uses some personal contact information criteria to automatically fill out the forms and surveys initiated by the user. The Web site will also provide a database of demographic information that will help FSA target the distribution of financial aid materials to specific groups of students and/or parents. For example, studies have shown that providing student financial assistance information to middle school (or elementary school) students and/or their parents dramatically increases the likelihood that those students will attend college. The demographic information from the Web site will help us to identify potential customers in the middle school age range and is information that was previously unavailable to us.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–32034 Filed 12–19–02; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 21, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 17, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Graduate Assistance in Areas of National Need (GAANN) Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 225.

Burden Hours: 2,250.

Abstract: GAANN grantees must submit a performance report annually. The reports are used to evaluate grantee performance. Further, the data from the reports will be aggregated to evaluate the accomplishments and impact of the GAANN Program as a whole. Results will be reported to the Secretary in order to respond to Government Performance and Results Act (GPRA) requirements.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–32094 Filed 12–19–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 21, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 17, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: State-Flex Application.

Frequency: Semi-annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 21.

Burden Hours: 13.440.

Abstract: Application for State-Flexibility Authority (''State-Flex''). By statute, the Department can grant State-Flex to up to seven state educational agencies (SEAs) through a competitive process. State-Flex SEAs receive (1) the flexibility to consolidate certain Federal formula funds reserved for State administration and State-level activities for any educational purpose authorized under the Elementary and Secondary Education Act (ESEA) to assist the SEAs, and the local educational agencies (LEAs) with which it enters into performance agreements, in making adequate yearly progress and narrowing achievement gaps; (2) the authority to

specify how LEAs in the State use Innovative Program funds under Part A of Title V; and (3) the authority to, in turn, enter into performance agreements with four to ten LEAs in the State (half of which must be high poverty LEAs), permitting those LEAs to consolidate certain Federal funds and to use those funds for any ESEA purpose consistent with the SEA's State-Flex plan. The purpose of State-Flex is to assist SEAs and LEAs in those states to meet the State's definition of adequate yearly progress (AYP) and narrowing achievement gaps.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–32095 Filed 12–19–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Reauthorization of the Higher Education Act; Notice of Request to Obtain Public Comments Related to the Reauthorization of the Higher Education Act

SUMMARY: The Secretary of Education (Secretary) is soliciting comments and recommendations from interested parties on proposals for amending and extending the Higher Education Act (HEA). To facilitate the receipt of these comments, the Department has established a web site from which users can transmit their comments, suggestions and ideas to the Department.

DATES: We request your comments on or before February 28, 2003. If possible, we will consider comments received after that date.

ADDRESSES: Comments concerning the reauthorization of the HEA should be transmitted via the Internet: *http://www.ed.gov/offices/OPE/reauthorization.* The Secretary encourages interested persons to take advantage of this user-friendly web interface. Interested persons wishing to submit comments by mail may address them to Jeffrey R. Andrade, Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education, 1990 K Street, NW., Room 8046, Washington, DC 20006 ATTENTION: HEA Reauthorization.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the Department's reauthorization web interface please call Daniel Pollard or Jean-Didier Gaina at (202) 502–7575.

If you use a telecommunication device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with Disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the person listed under **ADDRESSES.**

SUPPLEMENTARY INFORMATION: As we begin to consider proposals to reauthorize the HEA, we look to ensure that the significant amounts of funding for the programs authorized in the HEA are wisely spent. We also look to build upon successful program results in providing access to students and improving the quality of postsecondary education.

Background

Since the last reauthorization of the HEA in 1998, funding for the programs authorized under the HEA has increased significantly. Notably, the amount of Federal student aid available has been increased by $23 billion between 1998 and 2002. The fiscal year 2002 appropriations bill signed by President Bush on January 10, 2002, increased the Federal student aid available to students through the grant, loan, and work-study programs authorized by the HEA to a record $69 billion for an estimated 8.1 million students. The President's fiscal year 2003 budget request would provide Federal student aid to an additional 340,000 students.

Many of these increases have been directed to those HEA programs that serve the neediest students. For example, the Pell Grant maximum was increased from $3,000 in 1998 to $4,000 in 2002, and funding for the Pell Grant program has increased from $7.3 billion in 1998 to $10.3 billion in 2002. The amount appropriated for the Work-Study program increased 22 percent from 1998 to 2002 to more than $1 billion.

The period since the last reauthorization of the HEA has been a period of constant change and rapid growth for the Federal student loan programs. Education loans have become a valuable source of postsecondary student aid for many students and parents. The total amount borrowed annually, including consolidation loans, under the two major Federal loan programs, the Federal Family Education Loan (FFEL) Program-formerly the Guaranteed Student Loan (GSL) Program—and the William D. Ford Federal Direct Loan (Direct Loan) Program, has increased more than 50 percent, from $36 billion in fiscal year 1998 to an estimated $55 billion in fiscal year 2002.

Funding has also increased significantly for programs that aim to expand access and encourage first-generation, low-income, college students to attend and complete college. In fiscal year 2002, the Federal TRIO programs were funded at $803 million, an increase of 52 percent from 1998. These programs serve more than 850,000 at-risk students by providing outreach and support services, as well as information about postsecondary opportunities. Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) has grown significantly since its inception in 1998 and in fiscal year 2002 was funded at $285 million and serves 1.2 million students. Taken together, these programs represent more than $1 billion each year in annual funding and provide services to 2.1 million students from low-income families to help them enter and complete postsecondary education.

Funding for programs authorized by Title III of the HEA that strengthen the quality of institutions that serve large numbers of disadvantaged and minority students has also been increased since 1998. Specifically, funding for Historically Black Colleges and Universities (HBCUs) and Historically Black Graduate Institutions (HBGIs) has increased by 74 percent and 96 percent, respectively. Funding has also been increased for the Strengthening Institutions program to improve the academic quality, institutional management, and fiscal stability of a wide range of postsecondary institutions that serve large numbers of financially needy students by 33 percent.

Funding for the Hispanic-serving Institutions (HSIs) program authorized by Title V of the HEA has increased by $75 million—a six-fold increase. This program provides significant support to expand and enhance the academic quality, institutional management, fiscal stability, and self-sufficiency of the colleges and universities that enroll large percentages of Hispanic students.

The emerging importance of American higher education in the

international arena has also been reflected in the amount of funding for programs in this area. Appropriations for international education and foreign language studies have increased 63 percent from 1998 to 2002.

Many of the programs authorized under the HEA work well and provide a strong foundation of support for higher education. Some need to be made more effective in achieving better results. As part of reauthorization, we will consider how to make the HEA programs work better and complement the President's efforts to ensure that all Federal programs focus on stronger accountability for results.

Goals and Objectives for HEA Reauthorization

The Department's goal is to develop proposals that will best use the significant levels of funding for the HEA programs, build upon the successful results in those programs, improve the quality of and access to postsecondary education, promote greater emphasis on achieving results, improve student achievement, and ensure accountability for taxpayer funds.

The Secretary has already established several goals and objectives in the Department's strategic plan that relate directly to the programs authorized under the HEA:

Enhance the Quality of and Access to Postsecondary and Adult Education

- Reduce the gaps in college access and completion among student populations differing by race/ethnicity, socioeconomic status, and disability while increasing the educational attainment of all.
- Enhance efforts to prepare low-income and minority youth for college.
- Increase public communication about postsecondary options.
- Improve student support services.
- Highlight effective strategies for nontraditional students.
- Provide support to students with disabilities.

Strengthen Accountability of Postsecondary Institutions

- Refine the teacher quality accountability system mandated by Title II of the HEA.
- Create a reporting system on retention and completion that is useful for State accountability systems.

Establish Effective Funding Mechanisms for Postsecondary Education

- Investigate postsecondary funding strategies.
- Improve the efficiency of the Federal student aid process.

Strengthen HBCUs, HSIs, and Tribal Colleges and Universities (TCUs)

- Offer technical assistance for planning, implementation, and evaluation.
- Assist in promoting the technology infrastructure of institutions serving low-income and minority students.
- Collaborate with HBCUs, HSIs, and TCUs on K–12 improvement efforts.

Develop and Maintain Financial Integrity and Management and Internal Controls

- Increase the use of performance-based contracting.

Manage Information Technology Resources Using Electronic Communication and Record Storage, to Improve Services for our Customers and Partners

- Encourage customers to conduct business with the Department on-line.

Modernize the Federal Student Aid Programs and Reduce Their High-Risk Status

- Create a more efficient Federal student aid delivery system.
- Improve program monitoring.

Achieve Budget and Performance Integration to Link Funding Decisions to Results

- Document program effectiveness.

In addition, the Department also plans to apply its Department-wide objectives to programs authorized under the HEA:

Link Federal Education Funding to Accountability for Results

- Create performance-based grants.

Increase Flexibility and Local Control

- Increase flexibility for grantees and recipients within Federal Programs

Increase Information and Options for Parents

- Expand choice in Federal programs.

Encourage the Use of Scientifically Based Methods Within Federal Education Programs

- Revise grant applications to reflect scientifically based research.
- Work with the Congress to embed scientifically based research in all Federal programs.

Improve the Performance of All High School Students

- Increase learning options for students.

Improve Teacher and Principal Quality

- Reduce barriers to teaching for highly qualified individuals.
- Improve the quality of teacher preparation programs.

Leverage the Contributions of Community- and Faith-Based Organizations To Increase the Effectiveness of Department Programs

- Provide technical assistance and outreach.
- Remove regulatory barriers to the full participation of faith-based organizations.
- Implement novice applicant procedures.
- Eliminate statutory barriers to full participation of faith-based organizations.

Questions for Public Comment

We are seeking comments and recommendations on the issues and ideas presented here, as well as the following questions, as we begin to consider proposals for the reauthorization of the HEA.

a. How can we improve access and promote additional educational opportunity for all students, especially students with disabilities, within the framework of the HEA? How can the Federal Government encourage greater persistence and completion of students enrolled in postsecondary education?

b. How can existing HEA programs be changed and made to work more efficiently and effectively? In what ways do they need to be adapted or modified to respond to changes in postsecondary education that have occurred since 1998?

c. How can the HEA programs be changed to eliminate any unnecessary burdens on students, institutions, or the Federal Government, yet maintain accountability of Federal funds? How can program requirements be simplified, particularly for students?

d. How can we best prioritize the use of funds provided for postsecondary education and the benefits provided under the HEA programs? How can the significant levels of Federal funding already provided for the HEA programs best help to further the goals of improving educational quality, expanding access, and ensuring affordability?

e. Are there innovative and creative ways the Federal Government can integrate tax credits, deductions, and tax-free savings incentives with the Federal student aid programs in the HEA to improve access to and choice in postsecondary education?

f. What results should be measured in each HEA program to determine the effectiveness of that program?

g. Are there other ideas or initiatives that should be considered during

reauthorization that would improve the framework in which the Federal Government promotes access to postsecondary education and ensures accountability of taxpayer funds?

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the reauthorization of the Higher Education Act. All comments submitted in response to this notice will be available for public inspection, during and after the comment period at 1990 K Street, NW., 8th floor, Washington, DC, between the hours of 9 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: December 16, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–32089 Filed 12–19–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Public Scoping Meetings, and Notice of Floodplain and Wetlands Involvement for Remediation of the Moab Uranium Mill Tailings Site in Grand County, UT

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement and to conduct public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Department of Energy (DOE) NEPA Implementing Procedures (10 CFR part 1021), DOE announces its intent to prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of actions that would remediate contaminated soils, tailings, and ground water at the Moab Uranium Mill Tailings Site (Moab Project Site), Grand County, Utah, and contaminated soils in adjacent public and private properties (vicinity properties) near the Moab Project Site. The Moab Project Site is a former uranium-ore processing facility. In October 2000, the Floyd D. Spence National Defense Authorization Act for Fiscal Year (FY) 2001 gave DOE responsibility for remediation of the Moab Project Site. The Act also mandated that the Moab Project Site be remediated in accordance with Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (UMTRCA) (42 U.S.C. 7901 *et seq.*). UMTRCA includes vicinity properties as part of the project site. As part of the evaluation of reasonable alternatives, DOE will consider both on-site and off-site remediation and disposal of tailings and contaminated soils. Off-site disposal alternatives currently include four sites in Utah: Klondike Flats, near Moab; Crescent Junction, near the town of Crescent Junction and about 20 miles east of the town of Green River; the White Mesa Mill near the town of Blanding; and the East Carbon Development Corporation (ECDC) site, near East Carbon.

Because some actions that DOE could select would take place in or near wetlands or floodplains located on the Moab Project Site, the EIS will include a floodplain and wetlands assessment and a floodplain statement of findings in accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022). Additionally, because of a potential that current contamination could be impacting critical habitat for threatened and endangered fish, or that remediation measures could result in such impacts, a biological assessment under the U.S. Fish and Wildlife's implementing procedures for the Endangered Species Act (50 CFR part 402) will be prepared.

DOE invites Indian Tribes, individuals, organizations, and agencies to present oral or written comments concerning the scope of the EIS, and the floodplain, wetlands, and biological assessment(s). DOE also invites Indian Tribes and federal, state, and local governmental agencies and organizations with jurisdiction by law or special expertise to participate as cooperating agencies in preparing this EIS.

DATES: The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until February 14, 2003. DOE will consider all comments received or postmarked by that date in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable. Public scoping meetings will provide the public with an opportunity to present comments, ask questions, and discuss concerns regarding the EIS with DOE officials. The locations, dates, and times for the public scoping meetings are as follows:

1. January 21, 2003, Green River, Utah—City Hall, 240 East Main Street, 6 p.m. to 10 p.m.

2. January 22, 2003, Moab, Utah—Moab Valley Inn, 711 South Main Street, 6 p.m. to 10 p.m.

3. January 23, 2003 Meetings

a. White Mesa, Utah—White Mesa Ute Tribal Meeting, White Mesa Ute Recreation Center, 9 a.m. to 11 a.m.

b. Blanding, Utah—Navajo Nation Meeting, College of Eastern Utah Arts and Events Center, 639 W 100 South, 2 p.m. to 4 p.m.

c. Blanding Utah—Public Meeting—College of Eastern Utah Arts and Events Center, 639 W 100 South, 6 p.m. to 10 p.m.

4. January 28, 2003, East Carbon—Old City Hall, 200 Park Place, 6 p.m. to 10 p.m.

DOE will publish additional notices of the dates, times, and locations of the scoping meetings in local newspapers and other media in advance of the scheduled meetings. Any necessary changes will be announced in the local media.

ADDRESSES: Written comments or suggestions concerning the scope of the EIS, requests for more information on the EIS and the public scoping process, and requests to participate as a cooperating agency should be directed to Mr. Joel Berwick, Moab Project Manager, U.S. Department of Energy Grand Junction Office, 2597 B ¾ Road, Grand Junction, Colorado 81503; facsimile: (970) 248–6023.

In addition to providing comments at the public scoping meetings, interested parties are invited to record their comments, ask questions concerning the EIS, or request to be placed on the EIS mailing list or document distribution list by leaving a message on the toll-free EIS Hotline 1–800–637–4575, or e-mail at *moabcomments@gjo.doe.com.* The hotline will have instructions on how to record comments and requests.

FOR FURTHER INFORMATION CONTACT: For information on the Moab EIS, please contact: Mr. Joel Berwick, Moab Project Manager, U.S. Department of Energy, Grand Junction Office, 2597 B ¾ Road, Grand Junction, Colorado 81503; Phone: (970) 248–6020. For general information regarding the DOE NEPA process please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Phone: (202) 586–4600, or leave a message at 1–800–472–2756; NEPA Web site: *http://tis.eh.doe.gov/nepa/.* Additional information about the Moab Project can be found at *http://www.gjo.doe.gov/moab/moab.html.*

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

The Moab Project Site is located about 3 miles northwest of the City of Moab in Grand County, Utah, and lies on the west bank of the Colorado River at the confluence with Moab Wash. The site encompasses approximately 400 acres; a 130-acre uranium mill tailings pile occupies much of the western portion of the site. The Moab Project Site is bordered on the north and southwest by steep sandstone cliffs. The Colorado River forms the southeastern boundary of the site. U.S. Highway 191 parallels the northern site boundary, and State Highway 279 transects the southwestern perimeter of the property. Arches National Park has a common property boundary with the Moab Project Site on the north side of U.S. Highway 191, and the park entrance is located less than 1 mile northwest of the site. Canyonlands National Park is located about 12 miles to the southwest.

Originally, the property and facilities were owned by the Uranium Reduction Company (URC) and were regulated by the U.S. Atomic Energy Commission, a statutory predecessor agency of DOE. In 1956, URC began operation of the mill. In 1962, the Atlas Minerals Corporation acquired URC and operated the Site as the Atlas Mill Site until operations ceased in 1984. Between 1956 and 1984, uranium mill tailings were disposed of on-site in an unlined impoundment. Decommissioning of the mill began in 1988, and an interim cover was placed on the tailings impoundment between 1989 and 1995. In 1996, Atlas proposed to reclaim the tailings pile for permanent disposal in its current location. Atlas declared bankruptcy in 1998, and subsequently the U.S. Nuclear Regulatory Commission (NRC) appointed PricewaterhouseCoopers as Trustee of the Moab Mill Reclamation Trust and licensee for the Site. In 1999, prior to the transfer of the Site to DOE, NRC completed the Final Environmental Impact Statement (FEIS) Related to Reclamation of the Uranium Mill Tailings at the Atlas Site, Moab, Utah (NUREG–1531), which focused on surface remediation and cap-in-place. DOE will use information from the NRC EIS as appropriate in preparing this EIS.

In October 2000, Congress passed the Floyd D. Spence National Defense Authorization Act for FY 2001 that authorized transfer of the title and responsibility for cleanup of the site to DOE and required that the Moab Project Site undergo remediation in accordance with Title I of UMTRCA. The Act directed that the National Academy of Sciences (NAS) provide assistance to DOE in evaluating costs, benefits, and risks associated with remediation alternatives. DOE completed a preliminary draft Plan for Remediation that evaluated cap-in place and a generic off-site relocation alternative. The preliminary draft Plan identified several areas where the existing technical data were not conclusive, summarized existing information about the two alternatives, and was submitted to the NAS on October 30, 2001. After reviewing the preliminary draft Plan, the NAS provided a list of recommendations on June 11, 2002, for DOE to consider during its assessment of remediation alternatives for the Moab Project Site. DOE does not intend to finalize a separate Plan for Remediation, but instead will incorporate information from the Plan with the EIS, and will use the EIS process to support its decisionmaking for the remediation of the Moab Site. DOE has incorporated the NAS recommendations into its internal scoping of this EIS and is committed to addressing the NAS recommendations, in either the EIS or supporting documents.

During its years of operation, the mill accumulated approximately 11.9 million tons of uranium mill tailings that contain contaminants at levels above the Environmental Protection Agency (EPA) standards in 40 CFR part 192, ''Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings.'' The tailings are located in a 130-acre tailings pile, which averages 94 feet above the Colorado River terrace and is located about 750 feet from the Colorado River. Surveys indicate that soils outside the pile also contain radiological contaminants at concentrations above the EPA standards.

Ground water in the shallow alluvium at the site has also been contaminated by uranium milling operations. Ground water in the alluvium consists of a relatively thin zone of fresh water overlying a thicker brine zone. Preliminary investigations indicate that the major constituents of potential concern may be ammonia, arsenic, manganese, molybdenum, nitrate, selenium, sulfate, and uranium. Although final decisions for site and ground water remediation will not be made before the record of decision (ROD) that will consider the analyses provided in this EIS and other factors, and our subsequent proposals to Congress for implementing funding, DOE will be implementing actions such as ground water restoration in the interim to mitigate the impacts of ground water contamination.

The Colorado River adjacent to the site has also been negatively affected from site-related contamination, mostly due to ground water discharge. The primary site-related contaminant in surface water is ammonia, which potentially affects endangered fish species in the river. Concentrations of other constituents, particularly uranium and manganese, are also elevated in surface water samples.

Based on experience at other uranium milling sites, DOE anticipates that there may be contamination in areas adjacent to the milling site resulting from either historic off-site usage of the mill tailings for fill or construction material, wind blown transport of tailings from the milling site, or from the accumulation of residual stock of unprocessed ores or low-grade materials at off-site locations prior to processing at the mill. Under UMTRCA, these off-site properties are referred to as ''vicinity properties,'' defined to include any properties in the vicinity of the milling site contaminated with residual radioactive materials derived from the milling site. UMTRCA considers vicinity properties part of the milling site for purposes of cleanup. The EIS will address the impacts that would result from the remediation of any vicinity properties and include contaminated materials from vicinity properties in the assessment of both on-site and off-site disposal alternatives.

Proposed Action and Alternatives

DOE proposes to select remediation alternatives for contaminated surface materials (tailings pile, surrounding soils, and vicinity properties) and ground water. The range of reasonable surface remediation alternatives includes both on-site and off-site disposal of the tailings and impacted soils. As a result, the analyses of ground water remediation alternatives in this EIS will include site conditions under

both on-site and off-site surface remediation alternatives. The remediation alternatives being evaluated are described below under the No Action Alternative, Surface Actions, and Ground Water Actions.

No Action Alternative

Under the No Action Alternative, DOE would not remediate the uranium mill tailings, surface soil contamination, vicinity properties, or the contaminated ground water. This alternative is included to provide a basis for comparison to the action alternatives described above as required by NEPA regulations (40 CFR 1502.14(d)).

Surface Actions

Both on-site disposal and off-site disposal alternatives will be considered for the tailings pile, surrounding soils, and vicinity properties. On-site disposal would involve depositing contaminated soils on the tailings pile and capping the tailings pile in place. The off-site disposal alternatives would remove the tailings and contaminated soils and dispose of these materials at one of several locations within the region. The following off-site disposal locations, described below, will be assessed under the off-site disposal alternatives: Klondike Flats, Crescent Junction, White Mesa Mill, and the East Carbon Development Corporation (ECDC) site. Under the off-site disposal alternatives, three transportation modes will be evaluated: truck, rail, and slurry pipeline for some or all of the off-site disposal locations.

For all on-site disposal and off-site disposal alternatives, DOE must demonstrate that the combination of engineered controls (*e.g.*, cover and liner systems), institutional controls, and custodial care performed as part of the Long-Term Surveillance and Maintenance Program under UMTRCA, would ensure long-term protection of public health and safety and the environment.

On-Site Disposal Alternative

The on-site disposal alternative would consolidate all contaminated soils and stabilize the 130-acre tailings pile in place in an above-grade disposal cell at its current location on the Moab Project Site. A final cover would be designed to meet the requirements of EPA's standards (40 CFR part 192), utilizing DOE's experience with other uranium mill tailings disposal cell covers. Flood protection would be constructed along the base of the pile and cover materials for radon attenuation and erosion protection would be brought to the site from suitable borrow areas. The final design would meet the requirements of disposal cells under EPA (40 CFR part 92) and NRC (10 CFR part 40, Appendix A) standards.

Off-Site Disposal Alternatives

DOE is considering several off-site disposal alternatives. For these alternatives, DOE would remove the tailings pile and contaminated soils from the Moab Project Site and transport these materials to another location for disposal. To date, DOE has considered numerous off-site disposal locations and has determined that the range of reasonable sites within the region around Moab can be represented by four sites. The Klondike Flats and Crescent Junction sites represent locations where new disposal cells could be constructed; the White Mesa Mill and the ECDC sites represent existing facilities that could receive these materials.

Klondike Flats. Klondike Flats is a low-lying plateau about 17 miles north of Moab in Grand County, Utah. The Klondike site consists of undeveloped land administered by the Bureau of Land Management (BLM) interspersed with Utah State Lands. The eastern Klondike site boundary is adjacent to U.S. Highway 191 and is north of the privately-owned Canyonlands Field Airport property.

Crescent Junction. The Crescent Junction site is approximately 28 miles northwest of Moab and 30 miles east of Green River, just northeast of Crescent Junction in Grand County, Utah, on the north side of Interstate 70. The site also consists of undeveloped land administered by the BLM interspersed with Utah State Lands.

White Mesa Mill. The White Mesa Mill is located approximately 85 miles south of the Moab Project Site and 6 miles from Blanding in San Juan County, Utah. The mill, which is owned by the International Uranium Corporation, processes uranium-bearing materials and disposes of them on-site in lined ponds. It has been in operation since 1980. Although the facility has an NRC license to receive, process, and permanently dispose of uranium-bearing material, it would need a license amendment before it could accept material from the Moab Project Site. The mill has the potential to process materials from the Moab Project Site to extract valuable constituents and then dispose of the residues on-site or dispose of the materials without processing.

ECDC Site. The ECDC facility is located in East Carbon, Carbon County, Utah, and is approximately 100 miles northwest of the Moab Project Site. The site is leased by ECDC from the City of East Carbon. The estimated total lifetime disposal capacity of the facility is 300 million cubic yards. The facility is operating under a May 1990 Solid Waste Plan (permit) issued by the Utah Bureau of Solid and Hazardous Waste, which subsequently became the Utah Department of Environmental Quality. Wastes accepted under the permit include household waste, ash from Resource Conservation and Recovery Act facilities, mining wastes, and petroleum-contaminated media. As with the White Mesa site, permitting and/or licensing issues would have to be resolved before the material from the Moab Project Site could be disposed of at ECDC.

Off-Site Transportation Modes

Under the off-site disposal alternatives, three transportation modes will be evaluated: truck, rail, and slurry pipeline for some or all of the off-site disposal locations.

Truck Transport. Truck tractors hauling two bottom-dump trailers would likely be used. The trucks would use U.S. Highway 191 as the main route to the disposal site alternatives, with some usage of Interstate 70 to reach the ECDC site and perhaps the Crescent Junction site. Construction of highway entrance and exit facilities could be required to safely accommodate the high volume of traffic currently using this highway. Highway 191 is a main thoroughfare for commercial vehicles between Interstate 70 and the southwestern United States and receives seasonal tourist traffic. The State of Utah is currently in the design phase of widening the highway to four lanes from Moab north to State Highway 313. Construction for the first phase closest to Moab is tentatively scheduled for the spring of 2003.

Rail Transport. An existing rail line runs from the Moab Project Site north along U. S. Highway 191 and connects with the main east-west line near Interstate 70. The Klondike Flats, Crescent Junction, and ECDC disposal sites could be accessed from this rail line; however, the White Mesa Mill site could not, as there is no rail line extending south from the Moab Project Site. At the Moab Project Site, a railroad spur for loading rail cars would be constructed parallel with the main rail line. A covered conveyor system would be constructed from the tailings pile north across State Highway 279 to a train loading station that would be constructed on the rail siding. The extent of additional rail spur and haul roads needed would vary among the disposal sites.

Slurry Pipeline. This option would require the construction of a pipeline from the Moab Project Site to a disposal site. The tailings would be mixed with water at the Moab Project Site into a liquid (slurry) state, and pumped to drying beds at the disposal facility, where the slurry mixture would be dewatered prior to placement in the disposal cell. Reclaimed water would be returned through a second pipeline to the slurry mixing area of the Moab Project Site for reuse.

Ground Water Actions

Identification of the range of reasonable ground water remediation strategies that would achieve compliance with EPA ground water protection standards at the Moab Project Site for both on-site and off-site disposal alternatives will follow the framework defined in the Final Programmatic Environmental Impact Statement (PEIS) for the Uranium Mill Tailings Remedial Action Ground Water Project (DOE/EIS–0198), issued in October 1996, and a Record of Decision, issued April 28, 1997 (62 FR 22913–22916). The PEIS framework takes into consideration human health and environmental risk, stakeholder input, and cost. In applying the ground water remediation framework, DOE assesses ground water compliance in a step-by-step approach, beginning with consideration of a no-remediation strategy and proceeding, if necessary, to consideration of passive strategies, such as natural flushing with compliance monitoring and institutional controls, and finally to consideration of more complex, active ground water remediation methods, or a combination of strategies, if needed. This process has been used to support ground water remediation decisionmaking at 21 other UMTRCA Title 1 uranium mill tailings sites.

For the Moab Project Site, the process defined by the PEIS has begun, but is not yet complete. Therefore, the specific ground water remediation strategies to be assessed in this EIS have not yet been identified. Based on currently available characterization information, it appears likely that the remediation strategies may be specific to individual contaminants. For example, some contaminants may require no remediation to meet EPA's standards, and other contaminants may require natural flushing and/or active ground water remediation to meet the standards. DOE will continue to evaluate ground water characterization information for the on-site, off-site and no action alternatives, and apply the PEIS framework to identify the range of reasonable ground water strategies that will be included in the DEIS.

Floodplain and Wetlands Notice

The Moab Project Site is located within the 100- and 500-year floodplain designations of the Colorado River. A small section in the southeast section of the existing tailings pile falls within the 100-year floodplain.

U.S. Geological Survey data indicates that a 500-year flood would result in a water level 8 feet above the base of the existing tailings pile. The NAS identified severe flooding and changes in the river's path as an issue for the on-site disposal alternative.

Wetlands may be identified along the Colorado River, within riparian habitat, along the eastern boundary of the existing Site. Floodplain and wetland designations at alternative sites have not been completed, but will be evaluated in the EIS.

Executive Orders 11988 and 11990 mandate evaluation of Federal actions in floodplains and wetlands. The orders further require Federal agencies to issue regulations that include providing the public an opportunity to review proposals or plans for actions in floodplains or wetlands. DOE's floodplain and wetlands regulations are codified at 10 CFR part 1022. In compliance with requirements of the Executive Orders and regulations, this notice serves as notification for the public to provide comment on the proposed action and its potential to impact floodplains or wetlands. A separate notice will not be published in the **Federal Register**. Assessment of potential impacts to floodplain and wetlands will be included in the draft EIS, and a floodplain statement of findings will be included in the final EIS.

Identification of Environmental Issues

A primary purpose of this notice is to solicit comments and suggestions for consideration in the preparation of the EIS. As background for public comment, this notice contains a list of potential environmental issues that DOE has tentatively identified for analysis. This list is not intended to be all-inclusive or to imply any predetermination of impacts. Following is a preliminary list of issues that may be analyzed in the EIS:

- Ground water contamination mitigation and prevention;
- Impacts to human health and safety;
- Impacts to protected, threatened, endangered, or sensitive species of animals or plants, or their critical habitats;
- Impacts to floodplains and wetlands;
- Impacts to cultural or historic resources;
- Socioeconomic impacts;
- Impacts on air, soil, and water;
- Noise impacts;
- Visual impacts;
- Disproportionately high and adverse impacts to minority and low income populations;
- Long-term surveillance and maintenance of the site;
- Future land uses;
- Impacts from natural disasters such as climate change, flooding, or seismic events;
- Impacts to traffic and transportation systems;
- Cumulative impacts.

Cooperating Agencies

DOE is committed to working cooperatively with Federal, State, Tribal, and local governmental agencies and organizations to foster a collaborative approach to making decisions that affect local communities. In accordance with the Council on Environmental Quality's provisions for cooperating agencies (40 CFR 1501.6) and recent guidance, DOE has invited six Federal and five state agencies, and four Indian Tribes with jurisdiction or expertise to participate as cooperating agencies in preparing this EIS. The White Mesa Ute Tribe has agreed to participate as a cooperating agency. Any additional Federal or State agencies, tribes, or units of local government that desire to be designated as a cooperating agency should contact Mr. Berwick at the address listed above by February 14, 2003.

Scoping Process

The public scoping process is an opportunity for the public to assist DOE in determining the alternatives and issues for analysis. The scoping meetings will use a format to facilitate dialogue between DOE and the public and will be an opportunity for individuals to provide written or oral statements. DOE welcomes specific comments or suggestions on the content of these alternatives or on other alternatives that could be considered. The above list of issues to be considered in the EIS analysis is tentative and is intended to facilitate public comment on the scope of this EIS. Again, it is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. The EIS will analyze the potential environmental impacts of the alternatives, by using available data where possible, and by obtaining additional data where necessary. Copies

of written comments and transcripts of oral comments will be available at the following locations: Grand County Library, 25 South 100 East, Moab, UT 84532 (Phone: (435) 259–5421) and DOE Grand Junction Office, Technical Library, 2597 B ¾ Road, Grand Junction, CO 81503 (Phone: (970) 248–6089):

Draft EIS Schedule and Availability

The DEIS is scheduled to be issued in January 2004, at which time its availability will be announced in the **Federal Register** and local media, and public comments will again be solicited. People who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the DEIS for review and comment when it is issued, should notify Mr. Berwick at the address, phone numbers, or e-mail address listed above. The DEIS will also be made available in the reading rooms listed above, on the project Web page at *http://www.gjo.doe.gov/moab/moab.html,* and on the DOE NEPA Web site at *http://tis.eh.doe.gov/nepa/.*

Issued in Washington, DC this 16th day of December, 2002.

Beverly A. Cook,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 02–32126 Filed 12–19–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, January 8, 2003, 6 p.m.–9:30 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

• The meeting will focus on transuranic wastes at the Oak Ridge Reservation. Gary Riner, DOE–OR, will discuss these wastes as a primer for the Board and public prior to the EM SSAB Workshop on Transuranic Waste Management at the Waste Isolation Pilot Plant, to be held January 31–Feb 1, 2003.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued in Washington, DC on December 16, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–32064 Filed 12–19–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, January 8, 2003, 6 p.m.–8:30 p.m.

ADDRESSES: Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197, fax: 702–295–5300.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

• Discussion on transuranic waste shipments to the WIPP.

• Discuss Environmental Management issues.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued in Washington, DC on December 16, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–32065 Filed 12–19–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, January 9, 2003, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport, Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Update on Rocky Flats site closure progress.

2. Review and finalize draft end-state recommendation language.

3. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Website within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued in Washington, DC on December 17, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–32066 Filed 12–19–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, January 13, 2003, 1 p.m.–6:30 p.m., and Tuesday, January 14, 2003, 8:30 a.m.–4 p.m.

ADDRESSES: Hilton Oceanfront Hotel__Palmetto Dunes, 23 Ocean Lane, Hilton Head Island, SC 29928.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Science Technology & Management Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; phone: (803) 725–5374.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, January 13, 2003

1 p.m.: 2003 Work Plan Session
5:30 p.m.: Executive Committee
6 p.m.: Public Comment Session
6:30 p.m.: Adjourn

Tuesday, January 14, 2003

8:30–9:30 a.m.: Approval of Minutes; Agency Updates; Recognition for Outgoing Board Members; Public Comment Session; Facilitator Update
9:30–10:30 a.m.: Nuclear Materials Committee Report
10:30–11:45 a.m.: Long-Term Stewardship Committee Report
11–11:45 a.m.: Nuclear Materials Committee Report
11:45–12 a.m.: Public Comments
12 noon: Lunch Break
1–1:30 p.m.: Environmental Restoration Committee
1:30–2:30 p.m.: Waste Management Committee Report
2:30–2:45 p.m.: Strategic Initiatives Committee
2:45–3:45 p.m.: Administrative Committee Report; 2003 Committee Chair and Membership Elections
3:45–4 p.m.: Public Comments
4 p.m.: Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, January 13, 2003.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Fleming, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 725–5374.

Issued in Washington, DC on December 17, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–32067 Filed 12–19–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, January 16, 2003, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.: Informal Discussion
6 p.m.: Call to Order; Introductions; Approve November Minutes; Review Agenda; Board Retreat
6:10 p.m.: DDFO's Comments
- Budget Update
- ES&H Issues
- EM Project Updates
- CAB Recommendation Status
- Other Business

6:30 p.m.: Ex-officio Comments
6:40 p.m.: Public Comments and Questions
6:50 p.m.: Review of Action Items
7:05 p.m.: Break
7:15 p.m.: Presentation
- Conflict of Interest

8 p.m.: Public Comments and Questions
8:10 p.m.: Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:40 p.m.: Administrative Issues
- Review of Membership Application
- Review of Work Plan
- Review of Next Agenda
- Federal Coordinator Comments
- Final Comments

9 p.m.: Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed above or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued in Washington, DC on December 17, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–32068 Filed 12–19–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Workshop. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: January 31–February 1, 2003.

ADDRESSES: Pecos River Village Conference Center, 711 Muscatel Lane, Carlsbad, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, New Mexico 87505. Phone (505) 995–0393, fax:(505) 989–1752 or email: *mmanzanares@doeal.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Friday, January 31, 2003

7–8 a.m.: Registration
8–8:30 a.m.: Welcome and Introductions, Jim Brannon, NNMCAB Chair; Mayor, City of Carlsbad, U.S. DOE Designee, Martha Crosland, Designated Federal Officer, Dr. Ines Triay, Manager, Citizen Board Federal Officer
8:30–10 a.m: EM SSAB Transuranic Waste Management Workshop Introductory Presentations
10–10:15 a.m.: Break
10:15–11:30 a.m.: Round Robin Reports from SSAB Chairs on Site-Specific Transuranic Waste Issues and Concerns
11:30–12:30 p.m.: Plenary Session Discussion of Issues and Identification of Core Topics
12:30–1:30 p.m.: Lunch
1:30–3 p.m.: Core Topic Breakout Sessions
3–3:15 p.m.: Break
3:15–4 p.m.: Core Topic Breakout Sessions (continued)
4–5 p.m.: Plenary Session: Reports and Draft Recommendations from Breakout Sessions
5–5:30 p.m.: Individual SSAB Discussion of Core Topics
5:30 p.m: Public Comment

Saturday, February 1, 2003

8–8:30 a.m.: Plenary Session: Summary of Friday Session
8:30–10:30 a.m.: Core Topic Breakout Sessions (continued)
10:30–10:45 a.m.: Break
10:45–11:45 a.m.: Plenary Session: Breakout Session Final Papers
11:45–12:45 p.m: Plenary Session: Consideration of Recommendations
12:45–1 p.m.: Closing Remarks
1 p.m.: Public Comment
1:15 p.m.: Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday except

Federal holidays. Minutes will also be available by writing or calling Menice Manzanares at the address or telephone number listed above.

Issued in Washington, DC on December 17, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–32069 Filed 12–19–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3001–004, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Filings

December 12, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc.

[Docket No. ER01–3001–004]

Take notice that on December 3, 2002, the New York Independent System Operator, Inc. (NYISO) submitted a report on the status of its demand side management programs and the status of the addition of new generation resources in New York State in compliance with the Commission's previous orders in the above-captioned proceeding. The NYISO has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Market Administration and Control Area Services Tariff.

Comment Date: December 24, 2002.

2. Pacific Gas and Electric Company

[Docket Nos.ER02–1330–003]

Take notice that on December 9, 2002, Pacific Gas and Electric Company (PG&E) submitted a compliance filing in response to FERC's October 25, 2002 ''Order Conditionally Accepting, As Modified, Crediting Mechanism and Interconnection Agreements, And Ordering Refunds'', in this docket in the matter of several Agreements filed on March 18, 2002, including an executed Generator Interconnection Agreement (GIA) replacing an unexecuted placeholder GIA that is part of the Generator Special Facilities Agreement (GSFA), between PG&E and Los Medanos Energy Center LLC (LMEC) providing for Special Facilities and the parallel operation of LMEC's generating facility and the PG&E-owned electric system that is on file with the Commission as Service Agreement No. 8 to PG&E Electric Tariff, Sixth Revised Volume No. 5, and a proposed crediting mechanism for network upgrades.

Copies of this filing have been served upon LMEC, Calpine Corporation, the California Independent System Operator Corporation, and the California Public Utilities Commission, and the parties to this docket.

Comment Date: December 30, 2002.

3. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER02–2577–001]

Take notice that on December 9, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing substituted pages to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1, which reflect that Attachment K (Congestion Relief) has been deferred indefinitely until the Midwest ISO energy markets are operative in December 2003. The Midwest ISO submits that upon the deferral of implementation of Attachment K, the Midwest ISO will continue to implement as its congestion management tool the North American Electric Reliability Council (NERC) Transmission Loading Relief (TLR) procedures incorporated into the Midwest ISO OATT as Attachment Q.

The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has served a copy of this filing electronically, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been posted electronically on the Midwest ISO's Web site at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: December 30, 2002.

4. PJM Interconnection, L.L.C.

[Docket Nos. ER02–2651–001]

Take notice that on December 9, 2002, in compliance with the Commission's order in PJM Interconnection, L.L.C., 101 FERC ¶ 61,192 (2002), PJM Interconnection, L.L.C. (PJM) submitted for filing revisions to Schedule 6A (Black Start Service) of the PJM Open Access Transmission Tariff to change the reference to ''transmission customers'' in paragraph 1 of Schedule 6A to ''Transmission Customers and Network Customers'' and to change the title of paragraph 1 from ''Transmission Customers'' to ''Transmission Customers and Network Customers.''

Consistent with the Commission acceptance of Schedule 6A of the PJM Tariff, PJM requests an effective date of December 1, 2002 for the amendments. Copies of this filing were served upon all parties designated on the official service list in Docket No. ER02–2651–000, all PJM members and each state electric utility regulatory commissions in the PJM region.

Comment Date: December 30, 2002.

5. Sierra Pacific Power Company Nevada Power Company

[Docket No. ER03–37–001]

Take notice that on December 10, 2002, Sierra Pacific Power Company and Nevada Power Company (collectively Applicants) tendered for filing pursuant to Section 205 of the Federal Power Act, Section 35 of the Commission's Regulations, and the Commission's November 25, 2002 Order issued in the above-referenced proceeding, a compliance filing consisting of clean and redlined versions of Service Schedules 1–7 of the Sierra Pacific Resources Operating Companies FERC Electric Tariff, Third Revised Volume No. 1. These changes implement the requirement in paragraph 9 of the Commission's Order to make a compliance filing within 15 days to conform the Service Schedules with the requirement of Order No. 614.

Comment Date: December 31, 2002.

6. PJM Interconnection, L.L.C.

[Docket No. ER03–194–001]

Take notice that on December 10, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing a substitute unexecuted interconnection service agreement between PJM and Duke Energy Fayette, LLC (Duke Energy) to correct an error in the classification of the charges in the interconnection service agreement originally submitted for filing in this docket.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by Duke Energy and PJM. Copies of this filing were served upon Duke Energy, the state regulatory commissions within the PJM region, and the official service list for this proceeding.

Comment Date: December 31, 2002.

7. Golden Spread Electric Cooperative, Inc.

[Docket No. ER03–255–000]

Take notice that on December 9, 2002, Golden Spread Electric Cooperative, Inc. (Golden Spread) tendered for filing an amendment to its First Revised Rate Schedules No. 31 for service to South Plains Electric Cooperative, Inc. (South Plains). The amendment provides that as of January 1, 2003, South Plains will purchase power from Golden Spread on a full requirements basis.

Golden Spread requests waiver of the Commission's prior notice regulations such that the amendments may become effective on January 1, 2003. A copy of this filing has been served upon all of Golden Spread's members and the appropriate state commissions.

Comment Date: December 30, 2002.

8. Virginia Electric and Power Company

[Docket No. ER03–257–000]

Take notice that on December 10, 2002, Virginia Electric and Power Company (Dominion Virginia Power or Company) respectfully tendered for filing an amendment to its Open Access Transmission Tariff to implement a Rate Reciprocity Agreement with PJM Interconnection, LLC (PJM) whereby Dominion Virginia Power transmission system will be treated as if it were a part of PJM for rate purposes.

Comment Date: December 31, 2002.

9. Calpine Parlin, Inc.

[Docket No. ER03–259–000]

Take notice that on December 9, 2002, Calpine Parlin, Inc. filed a Notice of Succession to adopt CogenAmerica Parlin, Inc.'s market-based rate authorizations.

Comment Date: December 30, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32121 Filed 12–19–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0005; FRL–7425–3]

Agency Information Collection Activities; Submission of EPA ICR No. 2055.01 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following new Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Voluntary Children's Chemical Evaluation Program (VCCEP) (EPA ICR No. 2055.01). The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

DATES: Additional comments may be submitted on or before January 21, 2002.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.10. On April 16, 2002 (67 FR 18609), and May 15, 2002 (67 FR 34703), EPA sought comments in this ICR pursuant to 5 CFR 1320.8(d). EPA received a number of comments, which are addressed in the body of and attachments to the ICR.

EPA has established a public document for this ICR under Docket ID No. OPPT–2002–0005, which is available for public viewing at the EPA Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays ((202) 566–0280). An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oppt.ncic@epa.gov,* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mailcode: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OPPT–2002–0005, and (2) Mail a copy of your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket.

Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET.

Title: Voluntary Children's Chemical Evaluation Program (VCCEP) (EPA ICR No. 2055.01). This is a request to establish a new collection.

Abstract: VCCEP is a voluntary program intended to provide data to enable the public to understand the potential health risks to children associated with certain chemical exposures. EPA has asked companies which manufacture and/or import 23 chemicals which have been found in human tissues and the environment to volunteer to sponsor their evaluation in VCCEP. VCCEP consists of three tiers which a sponsor may commit to separately. Thus far, EPA has received Tier 1 commitments for 20 chemicals. As part of their sponsorship, companies would submit commitment letters, collect and/or develop health effects and exposure information on their chemical(s), integrate that information in a risk assessment, and develop a ''Data Needs Assessment.'' The Data Needs Assessment would discuss the need for additional data, which could be provided by the next tier, to fully characterize the risks the chemical may pose to children.

The information submitted by the sponsor will be evaluated by a group of scientific experts with extensive, relevant experience in toxicity testing and exposure evaluations, a Peer Consultation Group. This Group will forward its opinions to EPA and the sponsor(s) concerning the adequacy of the assessments and the need for development of any additional information to fully assess risks to children. EPA will consider the opinions of the Peer Consultation Group and announce whether additional higher tier information is needed. Sponsors and the public will have an opportunity to comment on EPA's decision concerning data needs. EPA will consider these comments and issue a final decision. If the final decision is that additional information is needed, sponsors will be asked to volunteer to provide the next tier of information. If additional information is not needed, the risk communication and, if necessary, risk management phases of the program will be initiated.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting burden for this collection of information is estimated to be about 520 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: manufacturers, processors, importers, or distributors in commerce of certain chemical substances or mixtures who have volunteered to sponsor a chemical under the VCCEP.

Frequency of Collection: On occasion.

Estimated No. of Respondents: 23.

Estimated Total Annual Burden on Respondents: 154,332 hours.

Estimated Total Annual Costs: $12,553,894.

Changes in Burden Estimates: This is a new ICR; therefore there is no change in burden estimates from that previously approved by OMB.

Dated: December 3, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–32131 Filed 12–19–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7425–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; General Hazardous Waste Facility Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: General Hazardous Waste Facility Standards, OMB Control No. 2050–0120, expires on December 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 21, 2003.

ADDRESSES: Send comments, referencing EPA ICR No. 1571.07 and OMB Control No. 2050–0120, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1571.07. For technical questions about the ICR contact David Eberly at (703) 308–8645, or by e-mail at *eberly.david@epa.gov.*

SUPPLEMENTARY INFORMATION: *Title:* General Hazardous Waste Facility Standards , OMB Control No. 2050–0120, EPA ICR No. 1571.07, expiring on December 31, 2002. This is a request for extension of a currently approved collection.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the U.S. Environmental Protection Agency (EPA) develop standards for hazardous waste treatment, storage, and

disposal facilities (TSDFs) as may be necessary to protect human health and the environment. Subsections 3004(a)(1), (3), (4), (5), and (6) specify that these standards include, but not be limited to, the following requirements:

- Maintaining records of all hazardous wastes identified or listed under subtitle C that are treated, stored, or disposed of, and the manner in which such wastes were treated, stored, or disposed of;
- Operating methods, techniques, and practices for treatment, storage, or disposal of hazardous waste;
- Location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;
- Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and
- Maintaining or operating such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.

The regulations implementing these requirements are codified in the *Code of Federal Regulations* (CFR) Title 40, parts 264 and 265. The collection of this information enables EPA to properly determine whether owners/operators or hazardous waste treatment, storage, and disposal facilities meet the requirements of section 3004(a) of RCRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 13, 2002 (67 FR 52718); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 319 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business or other for profit.

Estimated Number of Respondents: 1,675.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 719,059.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $760,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses above. Please refer to EPA ICR No. 1571.07 and OMB Control No. 2050–0120 in any correspondence.

Dated: December 4, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–32132 Filed 12–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0021; FRL–7425–5]

Agency Information Collection Activities; Submission of EPA ICR No. 0152.07 (OMB No. 2070–0020) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Notices of Arrival of Pesticides and Devices (OMB Control No. 2070–0020, EPA ICR No. 0152.07). The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 21, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Stephen Howie, Office of Compliance, 2225A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4146; fax number: (202) 564–0085; e-mail address: *howie.stephen@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on July 16, 2002 (67 FR 46663–4), and no comments were received.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0021, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public

disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket*.

Title: Notices of Arrival of Pesticides and Devices (OMB Control No. 2070–0020, EPA ICR No. 0152.07). This is a request to renew an existing approved collection scheduled to expire on December 31, 2002. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The U.S. Customs regulations at 19 CFR 12.112 require that an importer desiring to import pesticides into the United States shall, prior to the shipment's arrival, submit a Notice of Arrival of Pesticides and Devices (EPA Form 3540–1) to EPA who will determine the disposition of the shipment. After completing the form, EPA returns the form to the importer, or his agent, who must present the form to Customs upon arrival of the shipment at the port of entry. This is necessary to insure that EPA is notified of the arrival of pesticides and devices as required by the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) section 17(c) and has the ability to examine such shipments to determine that they are in compliance with FIFRA. The information is used by EPA Regional pesticide enforcement and compliance staffs, OECA, and the Department of Treasury. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Importers of Pesticide and Devices.

Estimated Number of Respondents: 18,500.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 5,550 hours.

Estimated Total Annual Cost: $396,085.

Changes in the Estimates: There is an increase of 3,450 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an adjustment in the number of respondents, based on a survey of responses reported to the EPA Regions in calendar year 2002.

Dated: December 2, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–32133 Filed 12–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6635–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements.

Filed December 9, 2002 through December 13, 2002.

Pursuant to 40 CFR 1506.9.

EIS No. 020509, Draft EIS, AFS, MO, Pineknot. Woodland Restoration Project, Restoring Open Shortleaf Pine Woodland on the 10,831 Acre, Implementation, Doniphan/Eleven Point Ranger District, Mark Twain National Forest, Carter County, MO, *Comment Period Ends:* February 3, 2003, *Contact:* Jerry Bird (573) 996–2153.

EIS No. 020510, Draft Supplement, FHW, WV, VA, Appalachian Corridor H Project, Construction of a 10-mile Highway between the Termini of Parsons and Davis, In Pursuant to the February 2000 Settlement Agreement, Tucker County, WV and VA, *Comment Period Ends:* February 21, 2003, *Contact:* Thomas J. Smith (304) 347–5928.

EIS No. 020511, Draft EIS, COE, MD, Aberdeen Proving Ground (APG) Project, To Conduct Research and Development, Test and Evaluate Ordnance, Military Equipment and to Train Personnel, Chesapeake Bay, Harford, Baltimore, Kent and Cecil Counties, MD, *Comment Period Ends:* February 3, 2003, *Contact:* Tracy Dunne (410) 278–2479.

EIS No. 020512, Final Supplement, NRC, Generic EIS—Decommissioning of Nuclear Facilities, Updated Information on Dealing With Decommissioning of Nuclear Power Reactors (NUREG–0586), *Wait Period Ends:* January 21, 2003, *Contact:* Michael T. Masnik (301) 415–1191.

EIS No. 020513, Draft EIS, SFW, WA, Nisqually National Wildlife Refuge (NWR), To Adopt and Implement a Comprehensive Conservation Plan, Puget Sound, Nisqually River Delta, Thurston and Pierce Counties, WA, *Comment Period Ends:* February 21, 2003, *Contact:* Michael Marxen (503) 590–6596. This document is available on the Internet at: *http://www.pacific.fws.gov/planning.*

EIS No. 020514, Legislative Draft, AFS, WA, I–90 Wilderness Study, To Review Land Comprising of 15,000 Acres for Suitability for Preservation as Wilderness, Omnibus Consolidated and Emergency Supplemental Appropriations Act, Okanogan and Wenatchee National Forests, Kittitas and Chelan Counties, WA, *Comment Period Ends:* February 18, 2003, *Contact:* Floyd Rogalski (509) 674–4411. This document is available on the Internet at: *http://www.fs.fed.us/r6/wenatchee/planning/i-90-wilderness-study.pdf.*

EIS No. 020515, Draft EIS, AFS, OR, Metolius Basin Forest Management Project, To Implement Fuel Reduction and Forest Health Management Activities, Deschutes National Forest, Sisters Ranger District, Jefferson County, OR, *Comment Period Ends:* February 15, 2003, *Contact:* Kris Martinson (541) 549–7730. This document is available on the Internet at: *http://www.fs.fed.us/r6/centraloregon/index-metolius.htm.*

EIS No. 020516, Draft Supplement, FTA, OR, WA, OR, South Corridor Project a Portion of the South/North Corridor

Project, Improvement to the Existing Urban Transportation System, Updated and Additional Information, Clackamas and Multnomah Counties, OR, *Comment Period Ends:* February 07, 2003, *Contact:* Sharon Kelly (503) 797–1756.

Amended Notices

EIS No. 020502, Draft EIS, MMS, AK, Cook Inlet Planning Area Oil and Gas Lease Sales 191 and 199, Outer Continental Shelf, Offshore Marine Environment, Cook Inlet, AK, *Comment Period Ends:* February 11, 2003, *Contact:* George Valiulis (703) 787–1662. Revision of FR Notice Published on 12/13/2002: Correction to Comment Period from 01/27/2003 to 02/11/2003.

Dated: December 17, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–32127 Filed 12–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6636–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–FHW–J40175–UT Rating EC2, Reference Post (RP) 13 Interchange and City Road Project, Construction of New Interchange at RP 13 to I–15 and City Road in Washington City, Funding, Washington County, UT.

Summary: EPA expressed environmental concerns with water quality analysis and limiting the interchange analysis to only one build alternative. In addition, land use impacts were not quantified despite land use change expectation. EPA was pleased to see information on habitat fragmentation and impervious surface impacts documentation.

ERP No. D–JUS–K80043–CA Rating EC2, Juvenile Justice Campus (JJC) Construction and Operation of a 1,400 Bed and Related Functions Facility, Conditional Use Permit, Fresno County, CA.

Summary: EPA expressed environmental concerns regarding farmland protection and sole source aquifer issues.

ERP No. D–NPS–E65060–NC Rating LO, Carl Sandburg Home National Historic Site, General Management Plan, Implementation, Located in the Village of Flat Rock, Henderson County, NC.

Summary: EPA review did not identify any potential environmental impacts requiring substantive changes to the proposal.

Final EISs

ERP No. F–DOE–L08061–00 McNary-John Day Transmission Line Project, Construction, Operation and Maintenance of a 79-mile-long 500-Kilovolt-Transmission Line between McNary Substation and John Day Substation, Umatilla and Sherman Counites, OR and Benton and Klickitat Counties, WA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–EDA–B99003–CT Adriaen's Landing Project, Development from Columbus Boulevard south of the Founders Bridge and Riverfront Plaza, City of Hartford, CT.

Summary: EPA had no objections to the proposed project and encouraged continued efforts to coordinate with impacted communities around the project site and to add pollution controls to construction equipment.

ERP No. F–MMS–G02011–00 Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales: 2003–2007, Starting in 2002 the Proposed Central Planning Area Sales 185, 190, 194, 198, and 201 and Western Planning Area Sales 187, 192, 196, and 200, Offshore Marine Environment, Coastal Counties and Parishes of TX, LA, AL and MS.

Summary: EPA had no further comments to offer. EPA has a lack of objections to the preferred alternative.

ERP No. FS–AFS–G65049–00 Vegetation Management in the Ozark/Quachita Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), Qzark, Quachita and St. Francis National Forests, AR and McCurtain and LeFLore Counties, OR.

Summary: EPA has no objection to the selection of the preferred alternative. EPA has no further comments to offer.

Dated: December 17, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–32128 Filed 12–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7421–4]

Notice of Intent To Grant an Exemption for the Injection of Certain Hazardous Wastes to Environmental Disposal Systems, Inc. for Two Injection Wells Located at 28470 Citrin Drive, Romulus, MI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency, Region 5, Chicago office, proposes (through this notice) to grant an exemption from the ban on disposal of hazardous wastes through injection wells to Environmental Disposal Systems Inc. (EDS) of Birmingham, Michigan. If the exemption is granted, EDS may inject all Resource Conservation and Recovery Act (RCRA) regulated hazardous wastes through waste disposal wells #1–12 and #2–12. The regulations promulgated under the Hazardous and Solid Waste Amendments to RCRA, prohibit the injection of restricted hazardous waste into an injection well. Persons seeking an exemption from the prohibition must submit a petition demonstrating that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous.

On January 21, 2000, EDS submitted a petition to the EPA, Region 5, Chicago office, seeking an exemption from the ban based on a showing that any fluids injected will not migrate vertically out of the injection zone or laterally to a point of discharge or interface with an underground source of drinking water (USDW) within 10,000 years. The EPA has conducted a comprehensive review of the petition, its revisions, and other materials submitted and has determined that the petition submitted by EDS, as revised on October 3, 6, 27, and 31, 2000; January 12, April 24, and October 16, 2001; and January 31 August 22, September 25, and October 23, 2002, meets the requirements of 40 CFR part 148, subpart C.

DATES: The EPA, Region 5, Chicago office, requests public comments on today's proposed decision. Comments

will be accepted until January 22, 2003. Comments post-marked after the close of the comment period will be stamped ''Late.'' Late comments do not have standing and will not be considered in the decision process. EPA will schedule a public hearing to allow comment on this proposed action. EPA will publish a notice of this hearing in a local paper and send it to people on its mailing list. If you wish to be notified of the date and location of the public hearing please contact the person listed below. EPA will cancel the hearing if it has no evidence of a need for a hearing.

ADDRESSES: Submit written comments, by mail, to: Ms. Sally Swanson, Acting UIC Branch Chief, United States Environmental Protection Agency, Region 5, Underground Injection Control Branch (WU–16J), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; or, to use e-mail, direct comments to *swanson.sally@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Harlan Gerrish, Lead Petition Reviewer, at the same address, Office Telephone Number: (312) 886–2939, or, to use e-mail, direct comments to *gerrish.harlan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

HSWA, which was enacted on November 8, 1984, imposed substantial additional responsibilities on those who handle hazardous waste. The amendments prohibit the land disposal of untreated hazardous waste beyond specified dates, unless the EPA determines that the prohibition is not required in order to protect human health and the environment for as long as the waste remains hazardous (RCRA section 3004(d)(1), (e)(1), (f)(2), (g)(5)). RCRA specifically defines land disposal to include any placement of hazardous waste into an injection well (RCRA section 3004(k)). After the effective date of prohibition, hazardous waste can only be injected under two circumstances:

(1) When the waste has been treated in accordance with the requirements of 40 CFR part 268 as required by section 3004(m) of RCRA, (the EPA has adopted the same treatment standards for injected wastes in 40 CFR part 148, subpart B); or

(2) When the owner/operator has demonstrated that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. Applicants seeking an exemption from the ban must demonstrate that the hydrogeological and geochemical conditions at the site and the physicochemical nature of the waste stream(s) are such that reliable predictions can be made either:

(a) That fluid movement conditions are such that the injected fluids will not migrate within 10,000 years: (1) Vertically upward out of the injection zone; or (2) laterally within the injection zone to a point of discharge or interface with an Underground Source of Drinking Water (USDW) (the no-migration standard); or

(b) That before the injected fluids migrate out of the injection zone or to a point of discharge or interface with USDW, the fluid will no longer be hazardous because of attenuation, transformation or immobilization of hazardous constituents within the injection zone by hydrolysis, chemical interactions or other means.

EDS has submitted a petition that uses mathematical models to demonstrate that the injected fluids will not migrate within 10,000 years.

The EPA published regulations setting forth the requirements for petitions for exemption from the disposal prohibition in the **Federal Register** on July 26, 1988 (53 FR 28118). The demonstrations are based on direct measurements of geological properties of the injection zone made during the construction and subsequent testing of the wells at the EDS facility on Citrin Drive or on values measured at similar locations where conditions can be expected to be near equivalents. Because the model encompasses a region which is much larger than sampling techniques employed along and between the well bores can reach, the demonstration allows for uncertainty by using values which are more conservative than those which the petitioner believes are most appropriate. The measurements are used to create a conceptual model of the geological framework into which waste is injected. Models must account for such geological properties as the porosity, permeability, and compressibility of the strata within the injection zone which will serve as the reservoir and the strata which are expected to confine the waste within the injection zone. Characteristics, such as density and viscosity, of the brine currently within the injection zone and of the waste which will be injected are also considered. Equations have been developed to calculate the pattern and extent of pressure increase resulting from injection for many different geologic models. When the proposed injection is simulated, computer programs use the appropriate equations to calculate the amount and distribution of increased pressure in the disposal reservoir. The distance which fluid and then independent molecules of the injected waste will move through the reservoir and confining zone are also calculated.

During the period of injection, fluids are pumped through the injection wells into porous geological formations at pressures which are sufficient to force the fluids to flow thousands of feet into the formations. In most cases, the operator of a particular group of injection wells controls the only injection occurring in the area. If there are other nearby injection or production wells, however, they will also affect how fluids move.

Injection moves the fluids at a relatively high velocity. This movement slows immediately, but continues at greatly reduced speed for a time after injection ends. The length of that time is approximately equal to the length of the injection phase. By the end of that time, the continued movement has allowed the hydraulic pressures around the injection wells to return to the pre-injection level, if it is a large injection formation. After the pressure dissipates, significant movement of waste fluid results from three phenomena: Natural background or regional flow, density differences, and diffusion of individual molecules through geological materials.

The simulation of waste movement is carried forward for a period of 10,000 years. EPA chose a time limit of 10,000 years for the demonstration because a demonstration over that time period would both suggest containment for a substantially longer time period and a 10,000-year time frame would allow time for geochemical transformations which might render the waste nonhazardous or immobile. (*See* 53 FR 28126). The EPA's Science Advisory Board agreed that the 10,000 year time frame is appropriate in a 1984 study dealing with the storage of radioactive wastes. The EPA's standard does not imply that leakage will occur at some time after 10,000 years. It requires a demonstration that leakage will not occur within that time frame. Understanding geological factors such as the permeability of intact rock, the presence of transmissive fractures, and the identification of artificial penetrations of the confining zone provides the key to constructing an accurate model and performing a valid simulation. Because 10,000 years is a relatively short interval of geologic time, we assume that only the three phenomena listed above affect the rate of movement. Each of these phenomena is well understood, and their effects can be calculated. If the simulation

establishes that the injected waste will not escape a defined volume of rock which is some distance below the USDWs or discharge to a USDW for a period of 10,000 years, the operation meets the regulatory no migration standard.

B. Facility Operation

EPA previously issued permits to the proposed EDS facility to commercially dispose of liquid wastes by deep well injection. The operator has constructed two wells. The proposed exemption is based on a long term average injection rate, for the facility as a whole, of 166 gallons per minute (gpm) averaged over one-month periods for a total of 7,275,780 gallons per month. The instantaneous injection rate may reach 270 gpm for the facility. The long term average rate limit is used to bound the area of the waste plume so that the plume will be no larger than the area estimated in the petition. The instantaneous limit will allow EDS to inject more waste for some periods of time than others to accommodate deliveries during normal business hours and other occurrences. The rate at which EDS may inject is also limited by the maximum allowable surface injection pressure.

The conservative nature of the demonstration is a significant aspect of the demonstrations. The result of the simulations which comprise the demonstration are not predictions of the distance to which the hazardous waste plume will move. Rather, they are predictions of a distance beyond which movement will not occur. That is, the actual distance of movement is expected to be considerably less than that simulated.

C. Submission

On January 21, 2000, EDS submitted a petition for exemption from the land disposal restrictions of hazardous waste injection under the HSWA of RCRA. EPA reviewed this submission for completeness and provided comments. EPA received revised documents on October 3, 6, 27, and 31, 2000; January 12, April 24, and October 16, 2001; and January 31, August 22, September 25, 2002 and October 23, 2002, responding to EPA comments.

II. Basis for Determination

A. Waste Description and Analysis (40 CFR 148.22)

Under the proposed exemption, EDS can inject wastes from a variety of industrial sectors and processes including: pharmaceutical production, steel pickling operations, automobile parts fabrication, and other commercial disposal operations at facilities which do not have the means to dispose of hazardous liquid wastes. EDS has petitioned the EPA, Region 5, to grant an exemption to allow injection of wastes bearing the following RCRA waste codes:

LIST OF RCRA WASTE CODES APPROVED FOR INJECTION

D001	D022	D043	F027	K015	K036	K071	K106	K141	K174	P017	P042	P067	P094	P118	P203	U020	U042	U064	U086	U109	U130	U151	U172	U194	U210	U249	U382
D002	D023	F001	F028	K016	K037	K073	K107	K142	K175	P018	P043	P068	P095	P119	P204	U021	U043	U066	U087	U110	U131	U152	U173	U196	U220	U271	U383
D003	D024	F002	F032	K017	K038	K083	K108	K143	K176	P020	P044	P060	P096	P120	P205	U022	U044	U067	U088	U111	U132	U153	U174	U197	U221	U277	U384
D004	D025	F003	F034	K018	K039	K084	K109	K144	K177	P021	P045	P070	P097	P121	U001	U023	U045	U068	U089	U112	U133	U154	U176	U200	U222	U278	U385
D005	D026	F004	F035	K019	K040	K085	K110	K145	K178	P022	P046	P071	P098	P122	U002	U024	U046	U069	U090	U113	U134	U155	U177	U201	U223	U279	U386
D006	D027	F005	F037	K020	K041	K086	K111	K147	P001	P023	P047	P072	P099	P123	U003	U025	U047	U070	U091	U114	U135	U156	U178	U202	U225	U280	U387
D007	D028	F006	F038	K021	K042	K087	K112	K148	P002	P024	P048	P073	P101	P127	U004	U026	U048	U071	U092	U115	U136	U157	U179	U203	U226	U328	U389
D008	D029	F007	F039	K022	K043	K088	K113	K149	P003	P026	P049	P074	P102	P128	U005	U027	U049	U072	U093	U116	U137	U158	U180	U204	U227	U353	U390
D009	D030	F008	K001	K023	K044	K093	K114	K150	P004	P027	P050	P075	P103	P185	U006	U028	U050	U073	U094	U117	U138	U159	U181	U205	U228	U359	U391
D010	D031	F009	K002	K024	K045	K094	K115	K151	P005	P028	P051	P076	P104	P188	U007	U029	U051	U074	U095	U118	U139	U160	U182	U206	U234	U364	U392
D011	D032	F010	K003	K025	K046	K095	K116	K156	P006	P029	P054	P077	P105	P189	U008	U030	U052	U075	U096	U119	U140	U161	U183	U207	U235	U365	U393
D012	D033	F011	K004	K026	K047	K096	K117	K157	P007	P030	P056	P078	P106	P190	U009	U031	U053	U076	U097	U120	U141	U162	U184	U208	U236	U366	U394
D013	D034	F012	K005	K027	K048	K097	K118	K158	P008	P031	P057	P081	P108	P191	U010	U032	U055	U077	U098	U121	U142	U163	U185	U209	U237	U367	U395
D014	D035	F019	K006	K028	K049	K098	K123	K159	P009	P033	P058	P082	P109	P192	U011	U033	U056	U078	U099	U122	U143	U164	U186	U210	U238	U372	U396
D015	D036	F020	K007	K029	K050	K099	K124	K160	P010	P034	P059	P084	P110	P194	U012	U034	U057	U079	U101	U123	U144	U165	U187	U211	U239	U373	U400
D016	D037	F021	K008	K030	K051	K100	K125	K161	P011	P036	P060	P085	P111	P196	U014	U035	U058	U080	U102	U124	U145	U166	U188	U213	U240	U375	U401
D017	D038	F022	K009	K031	K052	K101	K126	K169	P012	P037	P062	P087	P112	P197	U015	U036	U059	U081	U103	U125	U146	U167	U189	U214	U243	U376	U402
D018	D039	F023	K010	K032	K060	K102	K131	K170	P013	P038	P063	P088	P113	P198	U016	U037	U060	U082	U105	U126	U147	U168	U190	U215	U244	U377	U403
D019	D040	F024	K011	K033	K061	K103	K132	K171	P014	P039	P064	P089	P114	P199	U017	U038	U061	U083	U106	U127	U148	U169	U191	U216	U246	U378	U404
D020	D041	F025	K013	K034	K062	K104	K136	K172	P015	P040	P065	P092	P115	P201	U018	U039	U062	U084	U107	U128	U149	U170	U192	U217	U247	U379	U407
D021	D042	F026	K014	K035	K069	K105	K140	K173	P016	P041	P066	P093	P116	P202	P119	U041	U063	U085	U108	U129	U150	U171	U193	U218	U248	U381	U408
																											U409
																											U410
																											U411

B. Well Construction and Operation (§ 148.22)

EDS plans to operate the disposal wells for at least 20 years. The physics of well injection is well understood because of theoretical studies conducted by oil production companies and observations through the long history of injection and production in oil fields. EPA has developed the UIC program under the Safe Drinking Water Act to prevent underground injection which endangers USDWs. The program regulates construction and operation of most injection wells. The regulations impose extra requirements on hazardous waste injection wells. The operations of wells used for the disposal of hazardous wastes are subject to an exacting permitting program, monthly review of monitoring records, and periodic testing of the well and disposal reservoir. Additional safeguards, such as those set forth in the proposed decision, are also imposed.

Figure 1 includes a schematic diagram of the construction of Well #2–12 and the formations penetrated by the wells. The EDS wells have been constructed using four strings of steel casing for each well. As the wells were drilled, increasingly smaller casings were placed in the well and cemented to the surface. The first cemented casings are 20 (in #1–12) and 16 (in #2–12) inches in diameter and were set at 119 and 177 feet, respectively, to stabilize the well bores through the unconsolidated glacial drift. The second strings of casing are 13⅜ inches in diameter and were set at 396 and 598 feet, respectively, to prevent loss of drilling fluid into cavernous zones in the shallow bedrock. The third strings of casing were planned to provide the safest possible conduit through the near-surface USDWs. These casings are 9⅝ inches in diameter and are set at 824 and 1444 feet, respectively. The final casing is set from the surface to within the top of the formations which will be used as the waste reservoir. These casings are 7 inches in diameter and are set at 4,080 and 3,983 feet, respectively. The space around each of the casings was sealed with cement from the base of the casing to the surface. Cementing eliminates potential avenues for either the injected fluid or fluid from other, shallower zones to flow outside the casings and into USDWs.

EDS will inject the waste through a tubing set on a packer and isolated from the casing by a fluid-filled annulus, which will be continuously monitored for pressure change. The monitoring system is designed to trigger alarms and shut off injection if the injection pressure exceeds the maximum permitted levels, or if the difference between the injection and annulus pressures falls below the minimum permitted level.

Thus, the integrity of the construction will be monitored constantly by measuring the pressure within the annulus between the casings and tubing and tracking the amounts of liquid added to or removed from the annulus system. Even a small leak should be detected before environmental injury occurs. More rigorous annual testing ensures that even very small leaks are discovered. The pressure in the annulus will be maintained at a higher level than the pressures in either the formations outside the casing or within the injection tubing. Therefore, even if a leak occurs, the waste will not leak into the annulus; instead, annulus fluid will leak into the injection tubing through which waste is being injected and be carried downward into the waste disposal reservoir or, in the case of a casing leak, annulus fluid, not waste, will leak into the formations surrounding the well.

As described, the construction provides for a replaceable tubing and a system to detect when replacement of the tubing is necessary. The tubing prevents the waste from contacting all except the lowermost few tens of feet of casing, which are made of a corrosion resistant alloy. The three casing strings and layers of cement through the fresh water bearing formations provide extra protection from contamination.

In order to ensure that the wastes, once safely injected into the disposal formation, remain there, the UIC program regulates injection pressure and waste properties, and requires regular testing of the integrity of injection wells' construction. The injection pressure is important because injection pressure drives fluid movement through both the reservoir rock and the overlying confining rock. No rock is completely impermeable. Because the confining rock is usually less than one thousandth as permeable as reservoir rock, the distance of vertical movement through the confining rock is less than one thousandth as great as the horizontal movement through the reservoir rock. If sufficiently high, the injection pressure will fracture the reservoir rock and, at higher pressures, may fracture the confining rock. Therefore, EDS conducted tests during well construction to measure the resistance of the rock of the injection and confining zones to fracturing. These tests showed that injecting at pressures below 903 pound per square inch (psi) measured at the surface will not create fractures in the injection zone. The permits are being modified to limit the injection pressure at the surface to 903 psi.

The permits for the injection wells will limit the rate of injection, the pressure at which injection takes place, and the concentration of hazardous constituents to ensure that the actual conditions under which injection occurs are less likely to cause increased migration of hazardous constituents than those proposed and simulated as described in section F of this Fact Sheet. This will ensure that injected wastes will remain in the disposal formations, at depths below 3,700 feet, for at least 10,000 years.

Information available includes results of testing a well which EDS drilled in 1993, four miles away from the locations of wells #1–12 and #2–12. This well is the nearest well drilled into the Mt. Simon, Eau Claire, and lower Franconia Formations, which will serve as reservoirs; or into the upper Franconia-Dresbach, Trempealeau, Greenwood, and lower Black River Formations, which will serve as the arresting interval for wastes injected by EDS. Information from this well and other wells in Michigan and Ohio was used to determine the extent and shape of the important geological formations. Other nearby wells tend to go no deeper than the Trenton Formation which was penetrated at about 2,950 feet in the EDS wells.

Additional information was gained through testing of the new wells. Among other information, the UICB reviewers looked at the distribution of porosity and permeability along the well bore, the hydrostatic pressure in the reservoirs to be used for disposal, and the fracture opening and closure pressures in the disposal formation as well as in the overlying formations. The interaction of these factors determines the rate at which waste can be injected without having effects on the injection zone that can result in vertical movement through created fractures. The cementing and condition of the casing were also reviewed and found adequate.

C. Mechanical Integrity Test Information

The mechanical integrity tests described below were witnessed by EPA's contract inspectors. The test records were examined by UICB employees who recorded their observations and concluded that the tests were successfully passed.

To assure that the waste does not leak from the tubing prior to reaching the injection zone, 40 CFR 148.20(a)(2)(iv) requires submission of results from a

satisfactory annulus pressure test and a Radioactive Tracer Survey to test the cement seal at the base of the casing which were performed within one year of petition submission. On April 4, 2002, EDS used a pressure test to demonstrate the absence of leaks in the casing, tubing and packer of well #1–12 by forcing water into the annulus to create a pressure of 1,130 psi and then closed the valve used to add water to the annulus. The test standard is a pressure change of less than 3% in one hour. The pressure declined by 11 psi, which is just less than 1%. On April 4, 2002, EDS tested the construction of well #2–12 by using 1,110 psi. The pressure declined to 1,090 psi. Twenty psi is about 2%, so both wells passed the test and demonstrated the absence of leaks in the tubing and casing, and packers. This aspect of mechanical integrity (MI) is discussed in the federal regulations at 40 CFR 146.8(a)(1). The sealing of the casing to the rock surrounding the well bore immediately above the injection interval was tested using a short-lived radioactive (RA) tracer material which was carried deep into each well by a geophysical logging tool lowered into the wells on a cable on January 8, 2002, in the case of well #1–12, and on December 6, 2001, in the case of well #2–12. The tracer was released during injection of fresh water. The same tool which releases the tracer also contains detectors that are used to trace the movement of the RA tracer. If the cement sealing the well bore is not sound, RA material will go up the well bore outside the casing. The logging tool is used to determine the depth to which the tracer moves before it leaves the well bore. There was no indication of upward movement during either test. Both of these tests will be repeated annually.

In addition, EDS made temperature measurements at short intervals along the well bores to determine if liquid is moving from any formations penetrated by the well, along the well bore, and into a USDW. New temperature logs will be made at five-year intervals. These two tests (radioactive tracer surveys and temperature logs) offer very effective means of determining whether the injected waste remains in the injection zone.

D. Site Description

The EDS injection wells are located at 28470 Citrin Drive within the City of Romulus in Wayne County, Michigan, near Detroit.

1. Geological Location

Geologically these wells are located on the eastern edge of the Michigan Basin. Locally, dip is to the northwest at about 100 feet per mile. About 4,350 feet of Paleozoic sedimentary rocks covered by about 100 feet of glacially deposited materials overlie the granitic Precambrian basement.

The injection wells at the EDS facility have approximately 2,980 feet of separation between the lowermost USDW, found in the Detroit River Formation, less than 390 feet below the surface, and the top of the injection zone 3,369 feet below the surface (See Figure 1). This separation zone is composed of dolomites, shales, sandstones and siltstones which are predominantly characterized by low permeability at this location. Pressure bleed-off zones are an important factor in the containment of wastes. All sedimentary formations are made up of horizontal layers which have differing permeabilities. Layers with low permeability retard upward movement and layers with high permeability allow both upward and horizontal movement. Because upward movement is resisted again and again by layers with low permeability, fluids tend to flow horizontally. As a result, the pressure which drives the movement is reduced by the horizontal flow which occurs in any layer having higher permeability than the layer above it. The regulations require at least one major permeable bleed-off zone between the injection zone and the base of the USDWs. At the EDS facility, the major bleed-off zones are the White Niagaran between 2,133 and 2,227 feet and the Sylvania Sandstone between 400 and 550 feet below the surface. In addition, numerous other zones are composed of sand or dolomitized limestone which have sufficient porosity and permeability to function as pressure bleed-off zones.

Seismicity. Michigan is an area of low seismic risk. Earthquakes felt in Michigan have been generally minor. Moreover, the steel casings of deep injection and production wells are more flexible and resilient than the rock through which they pass. As a result, they are not damaged as a result of earthquakes unless actually sheared as a result of movement along a fault which they penetrate as demonstrated by wells in seismically active areas like California and Alaska. Because the Midwestern earthquakes are widely scattered, with none reported in the immediate vicinity of the EDS location, and have epicenters deep within the Precambrian granitic rocks far below the injection reservoir, there is virtually no possibility of damage as a result of seismic activity.

2. Injection Zone Description

The injection zone must have reservoir strata with sufficient permeability, porosity, thickness, and areal extent to allow the injected fluid to be distributed through a large volume of rock so that there is no long term increase in pressure in the injection zone. Above the reservoir zone, the injection zone must have strata which have low vertical permeability and are continuous across the area within which the reservoir strata will be affected by injection. These are called arresting strata, and they prevent upward movement of wastes from the injection zone to USDWs or the surface.

The injection zone for the EDS facility is between 3,369 and 4,468 feet below the surface. It consists of 900 feet of reservoir and overlying arresting strata, and includes upper Precambrian rocks at the base and the Mt. Simon, Eau Claire, Franconia-Dresbach, Trempealeau, Glenwood, and lower Black River Formations (See Figure 1). EDS has subdivided the injection zone into an injection interval and an arrestment interval. The Mt. Simon, Eau Claire, and Franconia-Dresbach Formations at depths from 3,937 to 4,550 feet below the surface will actually contain the injected wastes. They make up the injection interval. The Trempealeau, Glenwood and Black River Formations between 3,369 and 3,937 feet below the surface will prevent the waste from moving upward. They make up the arrestment interval. Each of these formations extends far beyond the vicinity of the EDS facility. The Mt. Simon and Eau Claire Formations reach the surface in Wisconsin, hundreds of miles from the EDS facility.

Waste is injected directly into the injection interval from the open-hole portion of the waste disposal wells. The Mt. Simon and Eau Claire Formations are composed of sandstones interbedded with siltstone, limestone, dolomite, and shale. These formations contain a number of zones which appear capable of accepting injected waste. The lower limit for porosity of rock which seems to accept injected liquids is 12%. The open-hole geophysical logs identified a total of 255 feet of section with porosity greater than 12%.

The permeability for the receptive intervals of the Eau Claire and Mt. Simon as a whole has been calculated by analyzing the pressure changes occurring during injection tests. A two-layer model was required in order to simulate the pressures actually recorded. The two layers are actually a summation of the effects of numerous layers, some with higher permeability

and some with lower. The zones with higher permeability can be described as 33 feet in thickness with an average permeability of 400 millidarcies (md). The zone with lower permeability can be described as 190 feet thick with an average permeability of 63.43 md.

The arresting interval is the portion of the injection zone above the injection interval, and contains dense carbonates and shale units with low permeability and porous carbonates and sandstones which are pressure bleed-off units. EDS calculated an average permeability for the arresting interval by calculating the harmonic average of vertical permeability measurements from the core samples having less than 12% porosity. That analysis concluded that the effective vertical permeability of the arresting interval is less than 0.005 md.

Fracture logging of the three wells drilled by EDS indicated several sub-vertical fractures in the arresting interval. These fractures have limited height and appear to be filled by mineral deposits, and do not compromise the integrity of the arresting interval. Because there are no known transmissive fractures or faults in the arresting interval, it is suitable for long term waste retention.

3. Confining Zone Description

In addition to the arresting strata within the injection zone, the injection zone must be overlain by a second series of strata which are sufficient to prevent upward fluid movement. These strata are known as the confining zone. Like the arresting interval, the confining zone must be (1) laterally continuous, (2) free of transecting, transmissive faults or fractures over an area sufficient to prevent fluid movement, and (3) of sufficient thickness and lithologic and stress characteristics to prevent vertical propagation of fractures. The immediate confining zone above the injection zone at EDS is made up of the upper Black River Limestone, the Trenton Formation, and the Utica and Cincinnatian Shales which are found between 2,364 and 3,369 feet (See Figure 1). This confining zone is 1,000 feet in thickness, and the top is at an elevation 2,000 feet below the lowermost USDW. No fractures were detected in the well bores and no transmissive faults or fractures are otherwise known to exist in the confining zone within the area of review.

The confining zone will resist vertical migration because of its low natural permeability. The confining zone must be separated from the lowermost USDW by at least one sequence of permeable and less permeable strata that will provide added layers of protection by either providing additional confinement (low permeability units) or allowing pressure bleed-off (high permeability units). Overlying the confining zone, the Clinton Formation is made up of shales and dolomite having low porosity and permeability. The Salina Formation contains thick beds of dense, plastic anhydrite and salt separated by dolomite, some of which is porous and permeable, and shale between 1,300 and 2,100 feet. The anhydrite and salt offer very effective barriers to fracturing and flow because they deform plastically under the weight of the overlying formations to reseal any void space. The White Niagaran between 2,133 and 2,227 feet is a dolomite which the well site geologist described as ''a new disposal formation'' in a letter mailed to the EPA on December 27, 2001. In addition, the Sylvania Sandstone between the depths of 400 and 550 feet is a thick, porous, and permeable formation which has been used extensively as an injection zone in the area. It is capable of accepting large amounts of fluid without developing hydrostatic pressures which would be high enough to either fracture it or even cause formation water to flow through an open conduit into the USDW. The layers are continuous for hundreds of square miles. They provide the added layers of protection required by the regulations.

4. Geochemical Conditions

The petitioner must adequately characterize the injection and confining zone fluids and rock types to determine the waste stream's compatibility with these zones. The injection zone is composed mainly of quartz sandstone, with minor amounts of siltstone and dolomite. These rock types are known to be resistant to most chemical attack. These Mt. Simon rock types are found in all wells which inject into the Mt. Simon. Periodic measurements in other wells injecting corrosive wastes into the Mt. Simon do not show changes in the size and shape of the well bores. Because these rocks generally are very resistant to chemical degradation, we anticipate little, if any, compatibility problems. To alleviate any problems that may arise from reactions between the native formation fluids and the injected wastes, EDS will inject fresh water to serve as a buffer between the formation water and the injectate before it begins to inject wastes and between injecting each batch of waste. The fresh water buffers will prevent wastes which might react with each other to form solids from mixing in the near well-bore region and will dilute the mixtures when they do come into contact as a result of mixing due to dispersion so that the possibility of reactions will be reduced. The confining zone is composed of silty shale and shaley dolomite. The injected fluid should have little effect on the dolomitic layers because dolomite does not react with dilute acids at the temperatures which will exist in the injection zone. The shale layers are very stable and will be essentially unaffected by contact with the injectate.

5. Wells in Area of Review

Under 40 CFR 146.63, the area of review (AOR) of class I hazardous waste wells is a two-mile radius around the well bore or a larger area specified by EPA based on the calculated cone of endangering influence of the well. The cone of endangering influence is the area within which pressurizing the injection interval can raise a column of formation fluid or injected fluid sufficiently to cause contamination of a USDW. When calculated using values for geological parameters which are accepted as most likely to be representative of actual conditions, the cone of endangering influence for the EDS injection wells has a radius of 23,275 feet, or 4.4 miles from the center of the line between the two wells. However, because this did not represent a worst-case scenario, EDS used more conservative values and calculated an enlarged cone of endangering influence which reaches 32,280 feet from the center of the line connecting the two wells. Under 40 CFR 148.20(a)(2)(ii), a petitioner must locate, identify, and ascertain the condition of all wells within the injection well's area of review that penetrate the injection zone or the confining zone. EDS conducted a well search over the larger cone of endangering influence consistent with the requirements of 40 CFR 148.20(a)(2)(ii) and 146.64, and identified two wells penetrating the confining zone and/or injection zone. As discussed below both of these wells have been properly plugged, completed or abandoned so no corrective action is required under 40 CFR 148.20(a)(iii) and 146.64.

The McClure Oil Co. Fritsch *et al.* #1 is located about 4.5 miles south of the EDS site. That well was drilled to a depth of 2,885 feet in 1955 and then plugged with heavy mud with a bridge plug at 1750 feet. The plugging was approved on July 21, 1955, by the Michigan Department of Conservation. This well has been properly abandoned, and there is no potential for fluids to move through a conduit. Moreover, the maximum depth of this well is almost

800 feet above the reach of the predicted upward migration of waste from the EDS well.

The second well, the EDS #1–20, was drilled by EDS in 1993 at a site which was to be used for the facility under review. This well, which was properly completed pursuant to an EPA UIC permit, penetrates the entire injection zone. The lower portion of the well has been plugged using a cast iron bridge plug above the injection zone with 50 feet of cement on top of the bridge plug. This meets Region 5's standards for plugging wells within the AOR, and will prevent the well's casing from serving as a conduit for the movement of fluids from the injection zone. Moreover, on January 12, 1999, EDS entered into a Stipulation and Consent Agreement with the Michigan Department of Environmental Quality (MDEQ). This agreement authorizes EDS #1–20 to remain inactive and not be considered abandoned, so long as all applicable requirements are met, until 30 days after EDS' receipt of all MDEQ approvals for the Citrin Drive facility. The agreement requires EDS to permanently plug and abandon the well within that 30-day period. When the well is abandoned, the EPA UIC permit for well #1–20 requires that the well must be properly plugged and abandoned under a plan approved by EPA. Well # 1–20 is properly completed, is not abandoned, and will be permanently plugged and abandoned pursuant UIC requirements. Therefore, a corrective action plan under 40 CFR 148.20(a)(iii) and 146.64 is not required.

It is probable that Sun Pipe Line Company will drill at least one injection well slightly more than one half mile from the nearest EDS well. Region 5 issued a permit for the construction of a well to be used for the injection of non-hazardous salt brine about 2,800 feet northeast of the nearest EDS well. Any injection wells which the Sun Pipe Line Company drills will be constructed to standards approved by Region 5 for the protection of USDWs and the construction will be overseen by Region 5's contract inspectors.

Because no wells penetrating the confining zone or injection zone are improperly plugged, completed or abandoned, a corrective action plan is not required under 40 CFR 146.64 and 148.20(a)(2)(iii).

6. Absence of Known Transmissive Faults

There are no known transmissive faults in the Glenwood, Trempealeau, and Franconia Formations, the strata within the injection zone that will confine fluid movement. Moreover, the interference test conducted on June 12–15, 2002, indicates that there are no transmissive fractures cutting the injection interval within the area between and near the wells.

E. The Use of Predictive Models to Demonstrate No Migration

The most practical and credible means for petitioners to demonstrate no migration of hazardous constituents from the injection zone is through the use of predictive mathematical models.

1. Conceptual Models

As discussed in the preamble to the final rule for petitioning for exemption, no-migration demonstrations rely upon conservative modeling techniques to evaluate the potential for migration of hazardous constituents from the injection zone. Fluid flow modeling is a well-developed and mature science and has been used for many years in the petroleum industry. A wide range of models exists that provide the capability to analyze pressure build up, lateral waste migration, vertical fluid permeation into overlying confining material, and leakage through defects in overlying aquitards; and models make it possible to predict tendencies or trends of events that have not yet occurred or that may not be directly observable. Under the no migration standard, a demonstration need not show exactly what will occur, but rather what conditions will not occur. Conservative modeling can be used to ''bound the problem'' and can legitimately form the basis for the petition demonstration. (*See* 50 FR 28126–28127 (July 26, 1988)).

2. Model Validation

The conceptual model incorporated within the ''no-migration'' demonstration must be validated. The objective of model validation is to demonstrate that the model adequately represents the type of rock layers, the physical processes of the injection zone, and the boundary conditions of the modeled interval.

In this case, a two-layer model was found to match the pressure responses measured during an interference test. We know from the measurements made during drilling that there are many layers of significantly different properties within the injection zone. However, it is often the case that the effects of many layers can be consolidated so that a simpler model can be used. The values determined for the two model layers are reasonable based on the type of rock in the injection zone and the actual measurements of physical properties. As a result, this part of the model is validated.

3. Verification of Mathematical Simulators

When used to make predictions, the simulator must be adequately verified. The verification process has two principal objectives: (1) To ensure that the simulation code is mathematically accurate, and (2) to ensure that the various features of the code are used correctly. Frequently simulators are verified by comparing the results of the simulator to be verified against the results from a previously verified simulator or an analytical solution.

Several different computer programs were used to simulate various phenomena in this demonstration. Pressurization was simulated using a computer code named INTERACT. The movement of the plume was simulated using empirical formulas which were verified by matching results of simulations incorporating similar models against those produced by SWIFT II, which has been extensively verified. Each of these methods and computer codes has been used in previous no migration demonstrations.

F. Application of Computer Simulation to the No-migration Demonstration

The petitioner chose to demonstrate that waste injected at the EDS facility wastes will remain in the injection zone and will not migrate to a point of discharge or interface with an underground source of drinking water for a period of 10,000 years. This demonstration was based on a showing that a geological model representative of the disposal reservoir and the overlying rock strata would contain the waste constituents within the disposal reservoir for a period of 10,000 years under the conditions of the simulation.

1. Model Development and Calibration

The development of the EDS model was conceived to be conservative to account for the uncertainties which exist because of inherent geological variability and because the subject wells had not been constructed at the time the modeling was begun. A conceptual model was developed using information developed from logs, core and other testing carried out during drilling of the EDS #1–20 well. The model included hydrogeologic information such as porosity, permeability, and thickness of the various zones. Next, this initial set of hydrogeologic parameters was calibrated or fine-tuned by comparing pressure responses predicted using these parameters to pressure records from injection tests of wells #1–12 and

2–12 made during the period from June 12–15, 2002.

Other model parameters, such as viscosity of the injected fluid, and diffusion coefficients of the waste constituents, were assigned from site-specific information when possible, and otherwise based on values which have been reported in similar situations and appeared in peer-reviewed writings. Where parameters were uncertain, conservative values were chosen. For those parameters most affecting pressure build up and waste migration, such as permeability, a range of values was modeled so that pressure and migration under less favorable conditions could be determined. This sensitivity analysis indicated that containment of wastes within the injection zone would occur even if actual conditions are much less favorable than there is reason to suspect.

The original model assumed that flow within the injection zone would be within a single zone of uniform properties. This model failed to allow simulations of tests made in the #2–12 well to match pressures actually measured. EDS conducted an interference test by injecting water into one well and measuring the pressure in the other well to eliminate the pressure effects caused by residual blocking of pore throats in the sandstone reservoir adjacent to the well bores. Good data were obtained through this test, but the simulator could still not match the measured pressures. Other models were tried. A model incorporating layers having differing permeability with flow possible between the layers was found to result in a remarkably close match. The poorest match between correlative simulated and measured pressure values was within 1.5%. For the most part, the simulator was able to match the real data almost perfectly. The successful model includes one layer which is 33 feet thick with a permeability of 400 md and one which is 190 feet thick with a permeability of 63.43 md, as mentioned above in the Injection Zone Description. The porosity of both zones was set at 11%.

This two-layer model is a reasonable explanation of how the disposal reservoir which was investigated during the drilling of the three EDS wells will react to injection. The logs and cores showed that there are many individual layers with varying permeability and that their effective net thickness is in the range of 200 to 250 feet. The average net porosity of these layers is about 11%. Other values used in the simulation also match those measured or calculated using standard procedures. As a result of approximating measurements made by tests in the wells, the model has been proved to be a valid surrogate for the reservoir itself. EDS actually modeled pressure buildup and plume movement only in the thinner zone (33 feet thick with 400 md permeability) to simplify the predictive modeling, This is conservative because it results in a more widespread plume and a larger radius for the zone of endangering influence than the use of the full two-layer model would. Although the results are less accurate than they might be, the deviation from accuracy is toward making the results appear to be ''worse'' than we have reason to expect. Because we are less interested in accuracy than in ensuring we made conservative assumptions, such simplifications are an acceptable and commonly used practice.

2. Model Predictions

Two simulation time periods were considered in the demonstration: A 20-year operational period and a 10,000-year post-operational period. For the operational period, vertical migration was calculated as though the maximum allowable pressure was used for injection through the entire operational period. For the post-operational period, additional lateral migration due to the natural flow gradient and buoyancy, and additional vertical migration due to molecular diffusion were simulated. Modeling results, and the parameter choices which ensure that these results represent reasonably conservative conditions, are presented below.

For the simulated operational period, the total simulated injection rate for the facility was set at 166 gpm for the first 19 years and 11 months of the 20-year service life. For the final month, the simulated rate was increased to 270 gpm for a single well. This rate plan results in the highest possible pressurization of the reservoir. However, the 33-foot reservoir layer accepted half of this volume while the 190 feet of the well bore with lower permeability accepted the remainder. This flow split was determined through the simulation. The product of the thickness and the average permeability of a zone relative to other available zones determines the fraction of flow which it will accept. The pressure increase in the 33-foot zone is the only result which was calculated. Assuming injection at the maximum rate into a portion of the injection zone provides a conservative cushion to the demonstration by causing an over-prediction of waste migration. To simplify computation and make the assumptions more conservative, the increase of 1,176 psi, which was predicted to occur only at the end of the operational period as a result of increasing the injection rate to 270 gpm, was assumed to exist for the length of the entire operational period. The maximum pressure buildup will be greatest near the injection wells and will decrease outward, declining to less than 89.6 psi at a distance of 4.4 miles (the edge of the regulatory Area of Review) at the end of the 20-year operational period.

Analytical solutions were also used to predict vertical waste migration. To be conservative, EDS doubled the length of the operational period, assumed that the maximum pressure will exist throughout this period, and found that injectate will penetrate through 10.1 feet of the arresting strata.

During the post-operational period, pressure in the injection zone will decrease and cease to cause movement. Molecular diffusion, which is random motion of individual molecules through the watery fluid which permeates even apparently dense rock, becomes the primary mechanism causing upward migration. EDS used an integrating method, taking into account lithologic differences for each foot of movement, to calculate vertical diffusion distance above the level reached by injectate during the operational period. This method also used the highest coefficient of molecular diffusion for any waste constituent and a concentration reduction to one trillionth (10^{-12}) of the starting concentration. This means that the resulting distance is that at which the concentration of any constituent will be less than one part in a trillion. For constituents which are still toxic at concentrations of one in a trillion, EPA will impose limits on starting concentrations in the injectate to ensure that no constituent will migrate beyond the resulting distance in hazardous concentrations. The EDS UIC permits will be modified to incorporate these limits. The maximum vertical movement of the waste front during the post-operational period is 227 feet from the assumed starting point at 3,925 feet upward to 3,698 feet, 239 feet below the top of the injection zone. This is a conservative estimate because it assumes 100% concentration of the most mobile constituent at the limit of pressure driven fluid movement for the entire post-operational period. Therefore, the waste will be contained within the vertical limits of the permitted injection zone throughout the post-operational period.

Lateral migration of the waste plume during the operational period is driven almost exclusively by injection pressure. If 100% displacement of formation waters from a cylinder of rock

33 feet thick with an effective porosity of 11% is assumed, the plume edge would be 3,199 feet from a single well at the end of the 20-year simulation period. This distance is further increased as a result of failure to displace 100% of native formation waters from the cylinder surrounding the wells. The effect of this failure and diversion of waste from straightline movement as a result of diversion around sand grains is called dispersion. The effects of dispersion can be calculated. The preparers of the EDS demonstration used a reasonably conservative estimate of 300 feet for longitudinal dispersivity and 25% of that value, 75 feet, for transverse dispersivity. Dispersion will increase the distance of flow by 13,607 feet in direction opposite the Sun wells. Therefore, at the end of the projected 20-year operational period, the total distance from the center of the plume to the southwest edge of the plume determined at the 10–12 concentration ratio (initial concentration/final concentration) is 16,806 feet. As mentioned in the Area of Review Section, it is possible that Sun Pipeline will be injecting 2000 gpm for about two years during the life of the EDS well at its Inkster Terminal one half mile to the northeast of the EDS facility. This injection would cause the center of the plume to be displaced 2,870 feet to the southwest, 141 degrees west of north. This would drive the southwest edge of the plume 6,069 feet from the center of EDS' injection. Dispersion would increase this to 16,806 feet. Therefore, the plume could extend more than three miles from the wells at the end of the projected 20-year operational period. This distance is within the area of review.

The simulation of plume-flow distance and direction during the post-operational period considered buoyancy and the natural flow within the Mt. Simon and Eau Claire Formations added to the movement which occurs during the operation of the wells. Buoyancy flow occurs because the strata into which waste will be injected dip slightly northwest into the Michigan Basin and the specific gravity of the injected waste will be different than that of the native water now filling the pores in the injection zone. Buoyancy resulting from either lighter waste being injected into a more dense native brine or a denser waste being injected into a less dense natural formation water results in a substantial movement of the waste front. Because of the conservative assumptions concerning the specific gravity of the injected waste, the amount of movement due to the effects of buoyancy is conservative.

The direction of buoyancy flow is 42 degrees west of north for a heavier waste and 166 degrees east of north for a lighter waste. EDS assumed that 100% of the waste to be injected will be a brine with a specific gravity of 1.22 (the heaviest fluid which might be injected) when calculating the distance of flow down into the Basin. When calculating the distance of movement up dip they assumed 100% of the waste will be methanol (the lightest fluid which might be injected) with a specific gravity of 0.88. Because the difference between the specific gravities of the native brine (1.153) and methanol is greater than the difference between those of a heavy waste, 1.22, and the native brine, the distance of movement due to buoyancy will be greater to the southeast. The angle of dip must also be considered. The dip to the southeast is 1.14 degrees and that to the northwest is about 0.68 degrees. To be conservative, the greater angle of dip was used to calculate the distances in both directions. The distance of updip movement of the centroid of the plume possible as a result of buoyancy is 14,792 feet in a direction 166 degrees east of north if the entire plume is as light as methanol.

Calculations based on the measurements made at the #2–12 well and several others indicated that the rate of flow is 0.4 ft/year in a northeasterly direction. The effect of regional flow could result in an additional 4,000 feet of drift plus associated dispersion to the movement of the waste plume over 10,000 years. Because the direction of flow is actually somewhat uncertain, the 4,000 feet of possible movement due to regional flow was added to the total distance of the movement regardless of which direction it was calculated. The net updip movement of the plume centroid is 20,672 feet in a direction 172 degrees east of north.

From that point, an analytical method was used to account for dispersive spread and project plume movement to the health-based limits. To make this calculation, the distance the center of the plume is displaced by regional flow (4,000 feet), the distance the center of the plume is displaced by buoyancy (14,792 feet), and the distance the center of the plume might be displaced by the proposed Sun injection (2,870 feet), each acting alone, are added, for a total distance of 21,662 feet. As explained earlier, the edge of the plume of hazardous waste is found where the concentration of waste constituents is reduced to one trillionth of the original concentration. Dispersion will move the health-based limit 27,539 feet beyond the end of the undispersed plume edge. At this distance, all hazardous constituents will be below the health-based levels or detection limits. To calculate the total distance of movement in the updip direction, the original radius of the plume (3,199 feet), the distances which the centroid is displaced by injection through other wells (2,870 feet), regional flow (4,000 feet), buoyancy (14,792 feet), and the distance added by dispersion must all be added, taking into account differences in the directions of the component vectors, including an additional 1,580 feet which SWIFT modeling indicates should be added to the results determined using the analytical method. Therefore, the maximum predicted lateral migration of waste at the EDS site is 52,990 feet (10 miles) in the updip, or southsoutheast, direction.

EDS used similar methods to calculate the distance of movement in various directions away from the injection wells. The downdip plume edge was found to be within 36,158 feet or 6.85 miles of the injection center in a northwesterly direction. The nearest point of discharge into a USDW is hundreds of miles to the west. Figure 2 shows the distances beyond which we can be very certain that the waste will not spread through a period of 10,000 years. Therefore, EDS has demonstrated to a reasonable degree of certainty that hazardous constituents will not migrate vertically out of the injection zone nor laterally to a point of discharge in a 10,000 year period.

G. Quality Assurance and Quality Control

EDS and its consultants have demonstrated that adequate quality assurance and quality control plans were followed in preparing the petition. EPA approved a quality assurance project plan on November 1, 2001. Some changes were made to accommodate changes in plans. These were reviewed and given informal approval as necessary. EDS followed an appropriate protocol for locating records for penetrations in the AOR, for collection and analyses of geologic and hydrogeologic data, for waste characterization, and for all tasks associated with the modeling demonstration.

III. Conditions of Petition Approval

In order to receive an exemption from the ban on injection of certain hazardous wastes, the EDS injection operation must meet the no-migration standard and the operation must be

protective of human health and the environment. Federal regulations at 40 CFR 146.13(a) establish the standard for a safe injection pressure. Region 5 has determined that operation at or below fracture closure pressure is the best means of assuring that the facility's injection pressure will be protective of human health and the environment. Therefore, as a condition of granting this exemption from the ban on injection of certain hazardous wastes, the EPA will impose following conditions:

(1) The permitted injection zone must be comprised of the Precambrian, Mt. Simon and Eau Claire, Franconia-Dresbach, Trempealeau, and Glenwood Formations from 3,369 to 4,550 feet below the surface;

(2) Injection shall occur only into that part of the Fraconia-Dresbach, Eau Claire, Mt. Simon, and Precambrian Formations which is more than 3,900 feet below the surface and less than 4,550 feet, true vertical depths, below the surface;

(3) The volume of wastes injected in any month through both wells at the site must not exceed 7,275,780 gallons. This volume will be calculated each month;

(4) Maximum concentrations of chemical contaminants which are hazardous at less than one part in a trillion (1:1,000,000,000,000) shall have limits for maximum concentration at the well head set through the permits;

(5) The injection pressure at the well head shall be limited to fracture opening pressure at the casing shoe. The fracture opening pressure while injecting waste of the highest density to be allowed was determined to be 903 psi (gauge) at the well head by tests constructed during drilling of well #2–12.

(6) The petitioner shall fully comply with all requirements set forth in Underground Injection Control Permits #MI–163–1W–C007 and #MI–163–1W–C008 issued by the EPA.

(7) This exemption is only granted while the underlying assumptions are valid. For instance, if the injection rate at the SPL facility exceeds 2000 gpm averaged over a period of a year, EDS must run a new simulation to evaluate the effect.

(8) The exemption will become invalid 20 years after injection commences. EDS must halt operations at that time unless Region 5 has approved a new, valid demonstration of no migration from the injection.

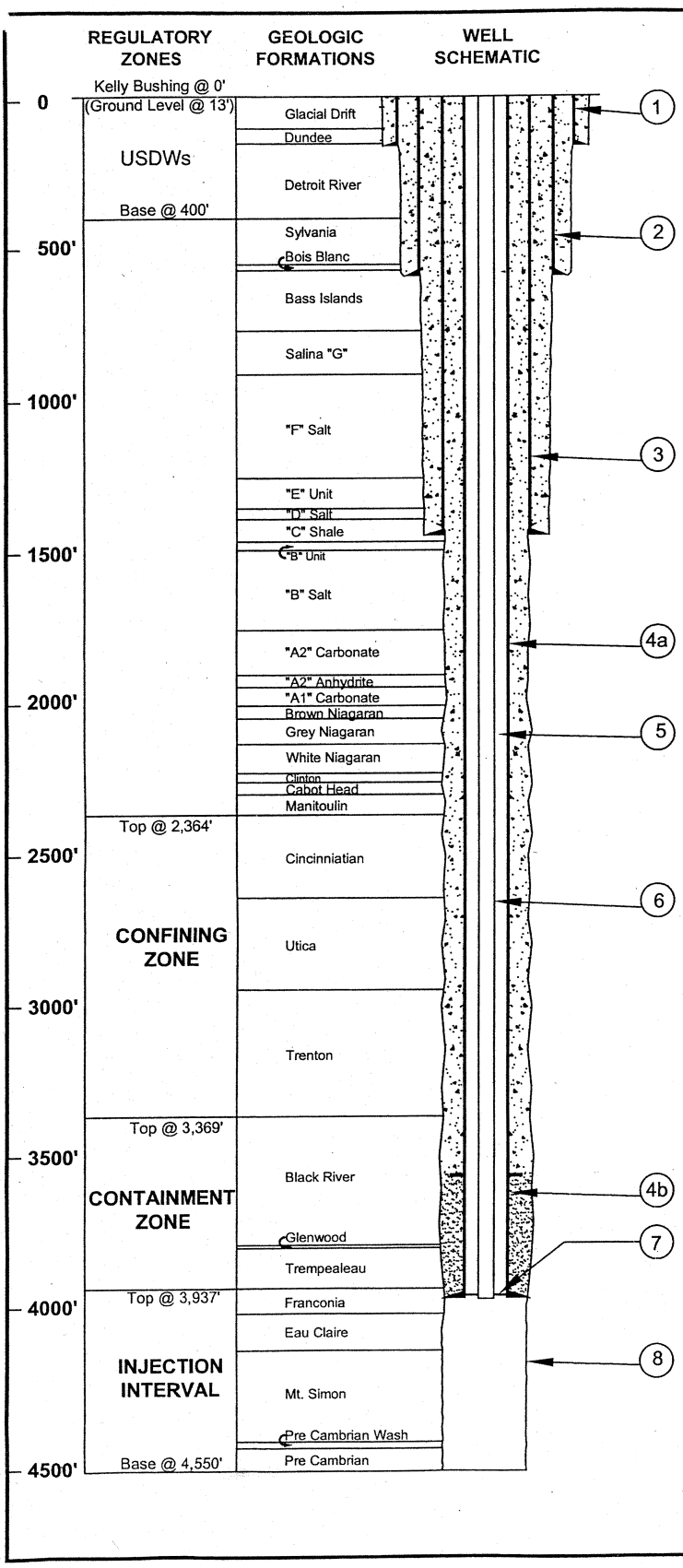
There are currently no extraction wells within the AOR, and the demonstration does not consider the effects of any extraction, such as the extraction of fluid from the Mt. Simon proposed by the SPL in the permit application denied by MDEQ. If SPL drills and operates one or more extraction wells in the AOR, then the conditions under which the EPA determined the no-migration demonstration to be valid would no longer exist and the Director will terminate the exemption. EDS would be prohibited from injection of hazardous wastes and authorization to inject nonhazardous wastes would probably be withdrawn. EDS would be allowed to resume injection only if a new demonstration, demonstrating compliance with the standards of 40 CFR part 148, subpart C were approved.

Dated: November 15, 2002.

Sally K. Swanson,

Director, Water Division, Region 5.

BILLING CODE 6560–50–P



BELOW GROUND DETAILS
(Depths = Measured Depths, Referenced to RKB)

1. **Conductor Casing:** 16 inch, 60 lb/ft casing set in a 20 inch hole at 169 feet and cemented to the surface with 300 sacks of Class A cement.

2. **Surface Casing:** 13 3/8 inch, 48 lb/ft, H-40 ST&C casing set in a 17½ inch hole at 598 feet and cemented to the surface with 350 sacks of 65/35 Pozzolan cement and 250 sacks of Class A cement.

3. **Intermediate Casing:** 9 5/8 inch, 36 lb/ft casing set in a 12¼ inch hole at 1,444 feet and cemented to the surface with 725 sacks of Class A cement.

4. **Protection Casing:** 7 inch casing set in an 8¾ inch hole at 3,983 feet and cemented to the surface in two stages as follows:
   a. **Stage I:** 5 joints of 7 inch, 20.42 lb/ft ST&C Hastelloy C-276 casing from 3,886 to 3,983 feet, with a 7 inch Halliburton Float Collar and Float Shoe connected to its base, and 7 joints of 7 inch, 26 lb/ft, K-55, LT&C carbon steel casing from 3,565 to 3,886 feet; cemented in place with 686 gallons of Epseal epoxy cement mixed 12.5 lb/gal.
   b. **Stage II:** 7 inch, 26 lb/ft, K-55, LT&C from the surface to 3,563 feet with a 7 inch stage collar positioned from 3,563 to 3,565 feet; cemented in place with 650 sacks of 50/50 Standard Pozmix and 450 sacks of Standard cement.

5. **Annulus Fluid:** 74 barrels of corrosion inhibited brine water.

6. **Injection Tubing:** 132 standard joints of Tubular Fiberglass Company 4½ inch, Red Box 2000 fiberglass tubing and a set of pup joints (4, 8 and 10 feet), latched into the top of the injection packer at 3,965 feet with 14,000 lbs surface tension.

7. **Injection Packer:** 4½ inch by 7 inch Model 12 Groundwater Protection Systems packer set at 3,965 feet.

8. **Open Hole Completion:** 8¾ inch open hole from 3,983 to 4,550 feet.

SUBSURFACE

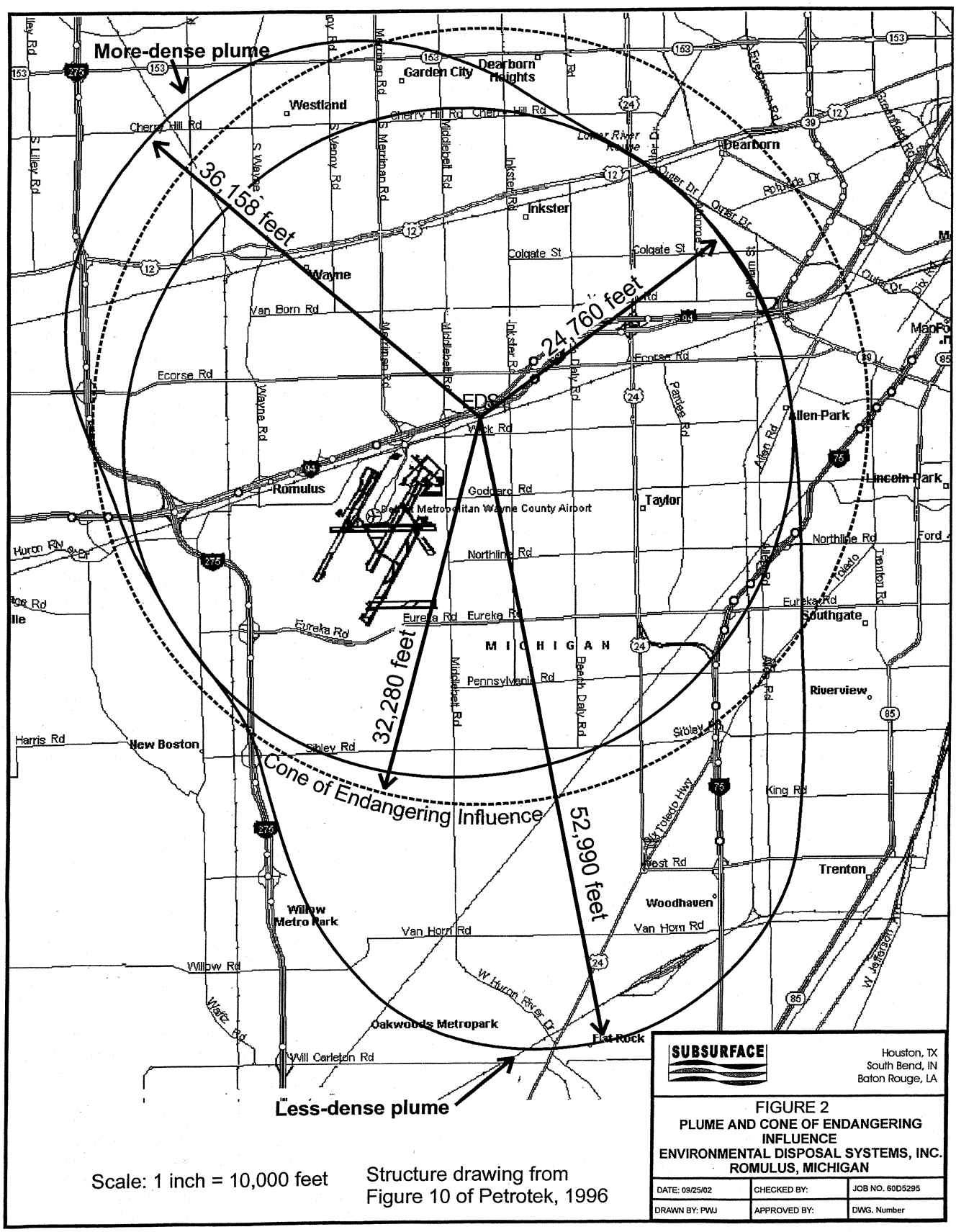
HOUSTON, TX.
SOUTH BEND, IN.
BATON ROUGE, LA.

FIGURE 1

ENVIRONMENTAL DISPOSAL SYSTEMS, INC.
ROMULUS, MICHIGAN

WELL SCHEMATIC
WELL 2-12

DATE: 08/16/02	CHECKED BY:	JOB NO: 60D5295
DRAWN BY: WDL	APPROVED BY:	DWG. NO:


More-dense plume
36,158 feet
24,760 feet
32,280 feet
52,990 feet
Cone of Endangering Influence
Less-dense plume
EDS
Detroit Metropolitan Wayne County Airport
MICHIGAN
Garden City
Dearborn Heights
Westland
Dearborn
Inkster
Wayne
Romulus
Taylor
Allen Park
Lincoln Park
Southgate
Riverview
Trenton
Woodhaven
New Boston
Willow Metro Park
Oakwoods Metropark
Flat Rock
Cherry Hill Rd
Van Born Rd
Ecorse Rd
Colgate St
Goddard Rd
Northline Rd
Eureka Rd
Pennsylvania Rd
Sibley Rd
Harris Rd
Van Horn Rd
Willow Rd
Will Carleton Rd
Middlebelt Rd
Merriman Rd
Wayne Rd
Inkster Rd
Beech Daly Rd
Pelham Rd
Allen Rd
Fort St
Telegraph Rd
Trenton Rd
King Rd
West Rd
W Huron River Dr
W Jefferson Ave
Scale: 1 inch = 10,000 feet
Structure drawing from Figure 10 of Petrotek, 1996
SUBSURFACE
Houston, TX
South Bend, IN
Baton Rouge, LA
FIGURE 2
PLUME AND CONE OF ENDANGERING INFLUENCE
ENVIRONMENTAL DISPOSAL SYSTEMS, INC.
ROMULUS, MICHIGAN
DATE: 09/25/02
CHECKED BY:
JOB NO. 60D5295
DRAWN BY: PWJ
APPROVED BY:
DWG. Number

[FR Doc. 02–31672 Filed 12–19–02; 8:45 am]
BILLING CODE 6560–50–C

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7425–9]

National Advisory Council on Environmental Policy and Technology (NACEPT) Superfund Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory NACEPT subcommittee on Superfund; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Superfund Subcommittee, a subcommittee of the National Advisory Council on Environmental Policy and Technology (NACEPT), will meet on the date and time described below. The meeting is open to the public. Seating will be on a first-come basis and limited time will be provided for public comment on each day.

DATES: The meeting will be held from 8:30 a.m. to 5:30 p.m. on January 7, 2003; from 8 a.m. to 12:15 p.m. on January 8, 2003.

ADDRESSES: The meeting will take place at the Hyatt Regency Washington on Capital Hill at 400 New Jersey Avenue, NW., Washington, DC 20001.

SUPPLEMENTARY INFORMATION:

Agenda

The third meeting of the Superfund Subcommittee will involve reports from the Subcommittee's working groups about their activities since the last full Subcommittee met in September 2002. The meeting will also include presentations and discussions of priority topics. To obtain a copy of the meeting agenda, contact Lois Gartner at (703) 603–9046.

Public Attendance

The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public sessions are encouraged to contact the Designed Federal Officer.

FOR FURTHER INFORMATION CONTACT: Lois H. Gartner, Designated Federal Officer for the NACEPT Superfund Subcommittee, Office of Emergency and Remedial Response, Office of Solid Waste and Emergency Response, MC 5204G, 1200 Pennsylvania Ave., NW., Washington, DC 20004, (703) 603–9046.

Dated: December 16, 2002.

Lois H. Gartner,

Designated Federal Officer, NACEPT Superfund Subcommittee.

[FR Doc. 02–32135 Filed 12–19–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7424–5]

Clean Water Act Section 303(d): Availability of 1 Total Maximum Daily Load (TMDL)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 1 TMDL and the calculations for this TMDL prepared by EPA Region 6 for waters listed in the Ouachita river basin, under section 303(d) of the Clean Water Act (CWA). This TMDL was completed in response to a court order in the lawsuit styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.).

DATES: Comments must be submitted in writing to EPA on or before January 21, 2003.

ADDRESSES: Comments on the 1 TMDL should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for the 1 TMDL is available for public inspection at this address as well. Documents from the administrative record file may be viewed at *www.epa.gov/region6/water/tmdl.htm,* or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner.

EPA Seeks Comment on 1 TMDL

By this notice EPA is seeking comment on the following 1 TMDL for waters located within the Ouachita river basin:

Subsegment	Waterbody name	Pollutant
081602 (and associated subsegments)	Little River—From Bear Creek to Catahoula Lake (Scenic).	Mercury in fish tissue.

EPA requests that the public provide any water quality related data and information that may be relevant to the calculations for 1 TMDL. EPA will review all data and information submitted during the public comment period and revise the TMDL where appropriate. EPA will then forward the TMDL to the Louisiana Department of Environmental Quality (LDEQ). The LDEQ will incorporate the TMDL into its current water quality management plan.

Dated: December 12, 2002.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 02–31976 Filed 12–19–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 12, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the

following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 21, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0584.

Title: Administration of U.S. Certified Accounting Authorities in Maritime Mobile and Maritime Mobile-Satellite Radio Services.

Form Nos: FCC Forms 44 and 45.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit.

Number of Respondents: 25 respondents; 50 responses.

Estimated Time Per Response: 1–3 hours.

Frequency of Response: On occasion, semi-annual and annual reporting requirements, third party disclosure requirement, recordkeeping requirement.

Total Annual Burden: 150 hours.

Total Annual Cost: N/A.

Needs and Uses: The FCC has standards for accounting authorities in the maritime mobile and maritime-satellite radio services. Information will be used to determine eligibility of applicants for certification as an accounting authority, to create internal studies and ensure compliance, and to identify accounting authorities to the International Telecommunications Union (ITU). Respondents are individuals or entities seeking certification or those already certified to be accounting authorities.

OMB Control No.: 3060–XXXX.

Title: Data Network Identification Code (DNIC).

Form No: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 5.

Estimated Time Per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1 hour.

Total Annual Cost: N/A.

Needs and Uses: A Data Network Identification Code (DNIC) is a unique, four-digit designed to provide discreet identification of individual public data networks. The DNIC is intended to identify and permit automated switching of data traffic to particular networks. The Commission grants the DNIC's to operators of public data networks on an international protocol. The operators of public data networks file an application for a DNIC on the Internet-based, International Bureau Filing System (IBFS). The DNIC is obtained free of charge on a one-time only basis unless there is a change in ownership or the owner chooses to relinquish the code to the Commission.

OMB Control No.: 3060–XXXX.

Title: International Signaling Point Code (ISPC).

Form No: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 40.

Estimated Time Per Response: .166 hours (10 minutes).

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 7 hours.

Total Annual Cost: N/A.

Needs and Uses: An International Signaling Point Code (ISPC) is a signaling point code with a unique format used at the international level for signaling message routing and identification of signaling points involved. The ISPC consists of a unique seven-digit code, synonymous with a telephone area code that identifies each international carrier. The Commission assigns ISPC's to international carriers in response to their filing of an ISPC application on the electronic, Internet-based International Bureau Filing System (IBFS). The Commission issues the code to international carriers free of charge on a first-come, first-served basis and informs the International Telecommunications Union (ITU) of its actions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–32006 Filed 12–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:09 a.m. on Tuesday, December 17, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman John M. Reich, seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: December 17, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–32263 Filed 12–18–02; 1:36 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Flood Mitigation Assistance—Flood Mitigation Plan.

Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0271.

Abstract: States and communities must have a FEMA approved flood mitigation plan before FEMA will award project grant assistance to a State or community applicant. FEMA and the States will use local community flood mitigation plans to identify the need to provide technical assistance to local governments lacking sufficient resources to complete FMA grant applications. Secondly, and more importantly, the local or State government that develops the plan will use it to make land use decisions, implement zoning changes, encourage smarter development, and implement projects to reduce the impacts of flooding on insurable structures.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 616.

Estimated Time Per Respondent:

Develop new Flood Mitigation Plans—440 hours;

Modify, refine existing Flood Mitigation Plans—40 hours;

Update existing Flood Mitigation Plans and forward to the State—200 hours;

States review, evaluate, and coordinate on Flood Mitigation Plans and forward to FEMA for approval—40 hours.

Estimated Total Annual Burden Hours: 116,624.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Facsimile number (202) 646–3347, or email address: *InformationCollections@fema.gov.*

Dated: December 12, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–32036 Filed 12–19–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1442–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1442–DR), dated November 14, 2002, and related determinations.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 14, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I determined on November 14, 2002, that the damage in certain areas of the State of Alabama, resulting from severe storms and tornadoes on November 5–12, 2002, was of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declared that such a major disaster existed in the State of Alabama.

In order to provide Federal assistance, you were authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You were authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you were authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint C. Michel Butler of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Barbour, Bibb, Blount, Calhoun, Cherokee, Cleburne, Cullman, Dale, DeKalb, Etowah, Fayette, Franklin, Greene, Hale, Henry, Houston, Jefferson, Lamar, Lawrence, Marion, Marshall, Morgan, Pickens, Shelby, St. Clair, Talladega, Tuscaloosa, Walker and Winston Counties for Individual Assistance.

Cullman, Cherokee, Fayette, and Walker Counties for Public Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32041 Filed 12–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1440–DR]

Alaska; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska, (FEMA–1440–DR), dated November 8, 2002, and related determinations.

EFFECTIVE DATE: December 11, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 8, 2002:

Delta Greely Regional Educational Attendance Area and Fairbanks North Star Borough for Individual Assistance (already designated for Categories A and B under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32037 Filed 12–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1445–DR]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1445–DR), dated December 4, 2002, and related determinations.

EFFECTIVE DATE: December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 4, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from severe winter storms, flooding, coastal erosion and tidal surge on October 23, 2002, through November 12, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Lokey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

Kenai Peninsula Borough, Kodiak Island Borough and Chignik Bay area, to include Chignik Lake and Chignik Lagoon for Individual Assistance.

Kenai Peninsula Borough and Chignik Bay area, to include Chignik Lake and Chignik Lagoon for Public Assistance.

All areas within the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32043 Filed 12–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1443–DR]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA–1443–DR), dated November 14, 2002, and related determinations.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 14, 2002:

Lafayette County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and

Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32039 Filed 12–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1443–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1443–DR), dated November 14, 2002, and related determinations.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 14, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I determined on November 14, 2002, that the damage in certain areas of the State of Mississippi, resulting from severe storms and tornadoes on November 10–11, 2002, was of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declared that such a major disaster existed in the State of Mississippi.

In order to provide Federal assistance, you were authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You were authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you were authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael Bolch of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

Clay, Lowndes, Monroe, Noxubee, and Oktibbeha Counties for Individual Assistance.

Lowndes County for Public Assistance.

All counties within the State of Mississippi are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32044 Filed 12–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1441–DR]

Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee, (FEMA–1441–DR), dated November 13, 2002, and related determinations.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 13, 2002:

Bledsoe and Fentress for Individual Assistance.

Roane and Van Buren for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32040 Filed 12–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1441–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1441–DR), dated November 13, 2002, and related determinations.

EFFECTIVE DATE: November 13, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 13, 2002, the President declared a major disaster under the authority of the Robert T. Stafford

Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I determined on November 13, 2002, that the damage in certain areas of the State of Tennessee, resulting from severe storms, tornadoes and flooding on November 9–12, 2002, was of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declared that such a major disaster existed in the State of Tennessee.

In order to provide Federal assistance, you were authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You were authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under the Public Assistance program will also be limited to 75 percent of the total eligible costs.

Further, you were authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gracia Szczech of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Anderson, Bedford, Carroll, Coffee, Crockett, Cumberland, Gibson, Henderson, Madison, Marshall, Montgomery, Morgan, Rutherford, Scott, Sumner, and Tipton Counties for Individual Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32042 Filed 12–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1439–DR]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1439–DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 2002:

Brazoria, Cameron, Fort Bend, Hidalgo, Kleberg, San Jacinto, and Jasper Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32038 Filed 12–19–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 3, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. The W.R. McGhee Trust for the benefit of William Zachery McGhee, and Willie B. Smith, Jr., as Trustee, both of Brantley, Alabama; to retain voting shares of First Dozier Bancshares, Inc., Dozier, Alabama, and thereby indirectly retain voting shares of First National Bank of Dozier, Dozier, Alabama.

Board of Governors of the Federal Reserve System, December 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–32004 Filed 12–19–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless

otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Sky Financial Group; Bowling Green, Ohio; to acquire Metropolitan Financial Corporation, Highland Hills, Ohio, and thereby indirectly acquire Metropolitan Bank and Trust Company, Highland Hills, Ohio, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–32005 Filed 12–19–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Financial Investors of the South, Inc., Birmingham, Alabama; to acquire up to 15 percent of the voting shares of Consumer National Bank, Jackson, Mississippi.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Lea M. McMullan Trust, and Citizens Union Bancorp of Shelbyville, Inc., both of Shelbyville, Kentucky; to acquire 100 percent of the voting shares of LaRue Bancshares, Inc., Hodgenville, Kentucky, and thereby indirectly acquire voting shares of The Peoples State Bank, Hodgenville, Kentucky.

C. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hometown Banc Corp, Grand Island, Nebraska; to acquire 100 percent of the voting shares of Five Points Bank of Hastings, Hastings, Nebraska (formerly known as Hometown Bank, Hastings, Nebraska).

Board of Governors of the Federal Reserve System, December 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–32003 Filed 12–19–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Application for Waiver of the Two-year Foreign Residence Requirement of the Exchange Visitor Program—0990–0001—Extension—The application is used by institutions (colleges, hospitals, *etc.*) to request a favorable recommendation to the USIA for waiver of the two-year Foreign Residence Requirement of the Exchange Visitor Program on behalf of foreign visitors working in areas of interest to HHS. *Respondents:* Individuals, State or local governments, businesses or other for-profit, non-profit institutions; *Total Number of Respondents:* 200; *Frequency of Response:* one time; *Average Burden per Response:* 6 hours; *Estimated Annual Burden:* 1200 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: December 9, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–32074 Filed 12–19–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of

Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 62475–77, dated October 7, 2002) is amended to reorganize the Office of the Director, CDC.

Section C–B, Organization and Functionss, is hereby amended as follows:

After the *Office of Management and Operations (CAD),* insert the following:

Office of Science Policy and Technology Transfer (CAE). (1) Advises the CDC Director and Senior Staff on science matters and represents CDC in these areas to the Department, other agencies, and Congress; (2) maintains the integrity and productivity of CDC's scientists by resolving controversial scientific issues, developing scientific policies and procedures, supporting training and information exchange, and presenting awards for outstanding scientific efforts; (3) assures the protection of human subjects in public health research; (4) integrates behavioral and social sciences research into public health research; (5) provides advice and guidance on the management of intellectual property; interprets policies, rules, and regulations, especially those related to the Federal Technology Transfer Act; (6) promotes and facilitates the timely transfer of technology, knowledge, products, and processes that improve public health through the use of patents, trademarks, Biological Materials Licensing Agreements, and Cooperative Research and Development Agreements; (7) coordinates governmental and non-governmental vaccine activities, including vaccine research, development, and safety and efficacy testing trough the National Vaccine Program Office and the National Vaccine Advisory Committee; (8) advises the Secretary of HHS and the Director of CDC about the most appropriate use of vaccines and immunization practices for effective disease control in the population through the Advisory Committee for Immunization Practices; and (9) manages the CDC and ATSDR Specimen and Data Bank, an archive of biological materials, including blood components, tissue, bacterial isolates, DNA, and other biological and environmental specimens.

Office of Minority Health (CAG). (1) Serves as the principal advisor to the Director, CDC/Administrator ATSDR on all minority health issues affecting the agency; (2) serves as the focal point for CDC minority health programs, projects, and issues including coordination of CDC/ATSDR activities with the PHS, other U.S. Government Agencies, health agencies of other nations, other national and international government and non-government organizations, community-based organizations, and the public at large; (3) provides leadership and coordination in the development and implementation of long-term plans for minority health activities within the Centers, Institute, and Offices of CDC; (4) provides leadership, in collaboration with senior managers, for policy initiatives to improve the health of ethnic populations, setting agency priorities, goals and objectives, defining appropriate interventions, and monitoring progress toward meeting these goals and objectives; (5) advocates for minority health issues, including presentation at scientific or programmatic meetings, publication of important findings, and dissemination of information via electronic or other means; (6) assesses the progress to improve minority health by establishing tracking mechanisms, and assuring the use of minority health measures to set goals and track accomplishments; (7) coordinates health initiatives including CIO and ATSDR support of Executive Branch and Departmental Minority Health Initiatives; (8) coordinates the planning, design and implementation of minority health research and oversees studies related to understanding and improving health disparities; (9) assists the CIOs and their constituents in identifying and improving the collection and analysis of data on race and ethnicity needed to develop policy, formulate research agendas, set program priorities, and monitor progress in achieving health outcomes; (10) assures minority health issues are incorporated in to the CIO and ATDSR research agendas and ongoing systematic reviews of the literature on intervention effectiveness; (11) assists CIOs and ATSDR in developing and implementing an agency-wide system to apply standards for evaluation and quality assurance, and monitor, evaluate, and measure the cost-benefit/effectiveness and prevention effectiveness of programs to reduce health disparities; (12) assists in the review and clearance of manuscripts, medical studies, or technical papers for publication, and recommends changes as needed to ensure the quality of the work and consistency with HHS and CDC minority health policies and goals, (13) assists the CIOs and their constituents to increase the competence and diversity of the public health workforce by supporting minority student internships, fellowships and Institutions of Higher Learning; and (14) identifies and fosters partnerships and collaborative activities with public, non-profit, private organizations and organizations and agencies, and academia to improve their organizational capacity to execute public health policy, programs, and the CDC and ATSDR agenda.

Office of the Executive Secretariat (CAH). (1) Anticipate potential problems and plans for processing future decisions and issue analyses; (2) coordinate the review and clearance of all controlled correspondence and other documents including announcements, position papers, briefing documents, and report to Congress regarding current Departmental and CDC/ATSDR policy considerations to facilitate consistency and adherence to HHS and agency policy across Centers/Institutes/Offices; (3) control the communications flow by communicating the actions taken by the Director on documents and at meetings, including revisions needed and follow-up action; (4) manage the flow of decision documents and correspondence for action by the Director of CDC; (5) assure that the Director has the views of OGC and the Deputy Director before making program or management decisions; (6) represent CDC in relations with the Executive Secretary of the Department, other HHS executive secretariats, and with outside document management organizations; (7) set editorial standards and processing policies for documents acted on by the Director; (8) track incoming documents and makes action and review assignments to appropriate staff; and (9) maintain all official records relating to the decisions and official actions of the Director, CDC and his immediate staff.

Dated: November 27, 2002.

David Fleming,

Acting Director.

[FR Doc. 02–32009 Filed 12–19–02; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

AGENCY: President's Committee on Mental Retardation (PCMR), HHS.

ACTION: Notice of meeting.

DATES: Monday, January 27, 2003, from 1 p.m. to 7 p.m., and Tuesday, January 28, 2003, from 8 a.m. to 4 p.m. The entire meeting of the PCMR will be open to the public.

ADDRESSES: The meeting will be held at the Aerospace Center Building, Aerospace Auditorium, 6th Floor East, 370 L'Enfant Promenade, SW., Washington, DC 20447. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Sally Atwater at (202) 619–0634 no later than January 13, 2003. We will attempt to meet requests after that date, but cannot guarantee availability. All meeting sites are barrier free.

Agenda: The Committee plans to discuss critical issues relating to individuals with mental retardation concerning education and transition, family services and supports, public awareness, employment, and assistive technology and information.

FOR FURTHER INFORMATION CONTACT: Sally D. Atwater, Executive Director, President's Committee on Mental Retardation, Aerospace Center Building, Suite 701, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone: 202–619–0634, fax: 202–205–9591, e-mail: *satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

Dated: December 6, 2002.

Sally D. Atwater,

Executive Director, President's Committee on Mental Retardation.

[FR Doc. 02–32002 Filed 12–19–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0515]

Guidance for Industry: Qualified Health Claims in the Labeling of Conventional Foods and Dietary Supplements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Guidance for Industry: Qualified Health Claims in the Labeling of Conventional Foods and Dietary Supplements.'' This guidance updates the agency's approach to implementing the court of appeals decision in *Pearson* v. *Shalala* (*Pearson*) to include conventional foods. FDA is taking this action to inform interested persons of the circumstances under which the agency intends to consider exercising its enforcement discretion to permit qualified health claims for conventional foods and dietary supplements.

DATES: Submit written or electronic comments on the guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Nutritional Products, Labeling and Dietary Supplements (HFS–800), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your request, or include a fax number to which the guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Kathleen Ellwood, Office of Nutritional Products, Labeling and Dietary Supplements (HFS–800), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1450.

SUPPLEMENTARY INFORMATION:

I. Background

After the enactment of the Nutrition Labeling and Education Act of 1990 (the NLEA), FDA issued regulations establishing general requirements for health claims in food labeling (58 FR 2478, January 6, 1993 (conventional foods); 59 FR 395, January 4, 1994 (dietary supplements)). By regulation, FDA adopted the same procedure and standard for health claims in dietary supplement labeling that Congress had prescribed in the NLEA for health claims in the labeling of conventional foods (*see* 21 U.S.C. 343(r)(3),(r)(4)). The procedure requires the evidence supporting a health claim to be presented to FDA for review before the claim may appear in labeling (21 CFR 101.14(d),(e); 21 CFR 101.70)). The standard requires a finding of ''significant scientific agreement'' before FDA may authorize a health claim by regulation § 101.14(c) (21 CFR 101.14(c)). FDA's current regulations, which mirror the statutory language in 21 U.S.C. 343(r)(3)(B)(i), provide that this standard is met only if FDA determines that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by the totality of publicly available scientific evidence, including evidence from well-designed studies conducted in a manner that is consistent with generally recognized scientific procedures and principles (21 CFR 101.14(c)). Without a regulation authorizing use of a particular health claim, a food bearing the claim is subject to regulatory action as a misbranded food (*see* 21 U.S.C. 343(r)(1)(B)), a misbranded drug (*see* 21 U.S.C. 352(f)(1)), and an unapproved new drug (*see* 21 U.S.C. 355(a)).

In *Pearson*, the plaintiffs challenged FDA's general health claims regulations for dietary supplements and FDA's decision not to authorize health claims for four specific substance/disease relationships. The district court ruled for FDA (14 F. Supp. 2d 10 (D.D.C. 1998)). However, the U.S. Court of Appeals for the D.C. Circuit reversed the lower court's decision (164 F.3d 650 (D.C. Cir. 1999)). The appeals court held that, on the administrative record compiled in the challenged rulemakings, the first amendment does not permit FDA to reject health claims that the agency determines to be potentially misleading unless the agency also reasonably determines that no disclaimer would eliminate the potential deception. On March 1, 1999, the Government filed a petition for rehearing *en banc* (reconsideration by the full court of appeals). The U.S. Court of Appeals for the D.C. Circuit denied the petition for rehearing on April 2, 1999 (172 F.3d 72 (D.C. Cir. 1999)).

In the **Federal Register** of October 6, 2000 (65 FR 59855), FDA published a

notice announcing its intention to exercise enforcement discretion with regard to certain categories of dietary supplement health claims that do not meet the significant scientific agreement standard in § 101.14(c). The notice set forth criteria for when the agency would consider exercising enforcement discretion for a qualified health claim in dietary supplement labeling. FDA is now issuing these criteria in the form of guidance and is expanding them to include health claims in the labeling of conventional foods. The October 6, 2000, **Federal Register** notice also described the process that FDA intends to use to respond to future health claim petitions; FDA is reissuing this information in the form of guidance. FDA is also clarifying that the agency will use a ''reasonable consumer'' standard in evaluating whether food labeling is misleading.

FDA believes that this guidance will assist food manufacturers and distributors in formulating truthful and nonmisleading messages about the health benefits of their products. As the agency has found (52 FR 28843, August 4, 1987), food labeling is a vehicle for ''improv[ing] the public's understanding about the health benefits that can result from adhering to a sound and nutritious diet.'' Food labeling can also communicate information concerning positive health consequences, beyond basic nutrition, of consuming particular foods. Such consequences can be communicated in nutrient content claims or health claims, for example.

Consumers are more likely to respond to health messages in food labeling if the messages are specific with respect to the health benefits associated with particular substances in the food. According to the Bureau of Economics Staff of the Federal Trade Commission (FTC) (Bureau of Economics Staff, ''Advertising Nutrition & Health: Evidence from Food Advertising 1977–1997'' (September 2002)), ''consumers are not as responsive to simple nutrient claims'' as they are to health claims. This difference in responsiveness reflects the explicit linkage in health claims of health benefits to particular nutrients or food components. If consumers understand the health advantages of consuming foods containing particular components, they are more likely to select foods containing those substances. In the aggregate, decisions by individual consumers to incorporate beneficial foods into their diets improve public health.

Conventional food manufacturers and distributors are more likely to include specific health claims in labeling if FDA makes clear their entitlement under the law to engage in such communications with consumers. There is evidence, reviewed by the FTC Bureau of Economics Staff (Bureau of Economics Staff, ''Advertising Nutrition & Health: Evidence from Food Advertising 1977–1997'' (September 2002)), that the content of food promotional messages responds to changes in applicable legal and regulatory requirements. As the FTC report stated, ''the evidence is consistent with the hypothesis that a more open environment leads to competitive pressures that induce producers to reveal information on more nutrient dimensions in advertising.'' By making clear the lawfulness of conventional foods labeled with truthful and nonmisleading health claims, FDA believes that this guidance will precipitate greater communication in food labeling of the health benefits of consuming particular foods, thereby enhancing the public's health.

As discussed further in the guidance, to meet the criteria for a qualified health claim, the petitioner would need to provide a credible body of scientific data supporting the claim. Although this body of data need not rise to the level of significant scientific agreement defined in FDA's previous guidance, the petitioner would need to demonstrate, based on a fair review by scientific experts of the totality of publicly available scientific information, that the ''weight of the scientific evidence'' supports the proposed claim. The test is not whether the claim is supported numerically (*i.e.*, whether more studies support the proposed claim than not), but rather whether the pertinent data and information presented in those studies is sufficiently scientifically persuasive. For a claim that meets the ''weight of the scientific evidence'' standard, the agency would decline to initiate regulatory action, provided the claim is qualified by appropriate language so consumers are not misled as to the degree of scientific uncertainty that would still exist.

FDA anticipates that this policy will facilitate the provision to consumers of additional, scientifically supported health information. FDA expects that, as scientific inquiry into the role of dietary factors in health proceeds, particular qualified health claims will be further substantiated, while for other qualified health claims the ''weight of the scientific evidence'' will shift from ''more for'' to ''more against.'' It is conceivable, therefore, that the information provided to consumers through qualified health claims in food labeling could change over time. FDA nevertheless believes that the dissemination of current scientific information concerning the health benefits of conventional foods and dietary supplements should be encouraged, to enable consumers to make informed dietary choices yielding potentially significant health benefits.

As FDA facilitates the provision of scientifically supported health information for food products, the agency must also strengthen its enforcement of the rules prohibiting unsubstantiated or otherwise misleading claims in food labeling. In assessing whether food labeling is misleading, FDA will use a ''reasonable consumer'' standard, as discussed below in section I of this document. Use of this standard will contribute to the rationalization of the legal and regulatory environment for food promotion, by making FDA's regulation of dietary supplement and conventional food labeling consistent with the FTC's regulation of advertising for these products.

The FTC's jurisdiction over food advertising derives from sections 5 and 12 of the FTC Act (15 USC 45 and 52), which broadly prohibit unfair or deceptive commercial acts or practices and specifically prohibit the dissemination of false advertisements for foods, drugs, medical devices, or cosmetics. The FTC has issued two policy statements, the Deception Policy Statement (appended to Cliffdale Assocs., Inc., 103 F.T.C. 110, 174 (1984)) and the Statement on Advertising Substantiation (appended to Thompson Med. Co., 104 F.T.C. 648, 839 (1984)), that articulate the basic elements of the deception analysis employed by the FTC in advertising cases. According to these policies, in identifying deception in an advertisement, the FTC considers the representation from the perspective of a consumer acting reasonably under the circumstances: ''The test is whether the consumer's interpretation or reaction is reasonable.'' 103 F.T.C. at 177.

FDA's general statutory authority to regulate food labeling derives from section 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(a)(1)), which deems a food misbranded if its labeling is false or misleading ''in any particular.''[1] The act

[1] The act does not require FDA to have survey evidence or other data before the agency is entitled to proceed under section 403(a)(1) of the act. FDA nevertheless recognizes that survey data and other evidence will be helpful in evaluating whether consumers are misled by a particular claim. For example, surveys, copy tests, and other reliable evidence of consumer interpretation can be helpful in assessing the particular message conveyed by a statement that FDA believes constitutes an implied claim.

contains similar provisions for drugs and medical devices (21 U.S.C. 352(a)) and cosmetics (21 U.S.C. 362(a)). In some cases, the courts have interpreted the act to protect ''the ignorant, the unthinking, and the credulous'' consumer. See, e.g., *United States* v. *El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951); *United States* v. *An Article of Food* * * * ''*Manischewitz* * * * *Diet Thins*,'' 377 F. Supp. 746, 749 (E.D.N.Y. 1974). In other cases, the courts have interpreted the act to require evaluation of claims from the perspective of the ordinary person or reasonable consumer. See, e.g., *United States* v. *88 Cases, Bireley's Orange Beverage*, 187 F.2d 967, 971 (3d Cir.), cert. denied 342 U.S. 861 (1951). FDA believes that the latter standard is the appropriate standard to use in determining whether a claim in the labeling of a dietary supplement or conventional food is misleading.

The reasonable consumer standard more accurately reflects FDA's belief that consumers are active partners in their own health care who behave in health promoting ways when they are given accurate health information. In addition, the reasonable consumer standard is consistent with the governing first amendment case law precluding the Government from regulating the content of promotional communication so that it contains only information that will be appropriate for a vulnerable or unusually credulous audience. *Cf. Bolger* v. *Youngs Drug Prods.* Corp., 463 U.S. 60, 73–74 (1983) (''the government may not 'reduce the adult population * * * to reading only what is fit for children.'''') (quoting *Butler* v. *Michigan*, 352 U.S. 380, 383 (1957)).

Based on the FTC's success in policing the marketplace for misleading claims in food advertising, FDA believes that its own enforcement of the legal and regulatory requirements applicable to food labeling will not be adversely affected by use of the ''reasonable consumer'' standard in evaluating labeling for dietary supplements and conventional foods. Explicit FDA adoption of the reasonable consumer standard will rationalize the regulatory environment for food promotion while both protecting and enhancing the public health.

This guidance represents the agency's current thinking on qualified health claims in the labeling of conventional foods and dietary supplements. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

This guidance is a Level 1 guidance under FDA's good guidance practices (GGP) regulation (21 CFR 10.115). Under § 10.115(g)(2), the guidance is being implemented immediately, without prior public comment, to help ensure that FDA's policies on health claims in food labeling comply with the governing first amendment case law. Consistent with the GGP regulation, FDA is now soliciting comment on the guidance and will revise it, if warranted.

FDA tentatively concludes that this guidance contains no collection of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

II. Comments

Interested persons may, at any time, submit written or electronic comments on the guidance to the Dockets Management Branch (*see* **ADDRESSES**). Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.cfsan.fda.gov/dms/guidance.html* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: December 17, 2002.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 02–32194 Filed 12–18–02; 12:01 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: January 6–7, 2003.

Time: 8 a.m. to 1 p.m.

Agenda: To discuss the future of the DCLG and to meet with NCI staff to discuss their research plans.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Elaine Lee, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892, 301/594–3194.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–32084 Filed 12–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Review Committee.

Date: February 24, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton, 1250 South Hayes Street, Plaza C, Arlington, VA 22202.

Contact Person: Valerie L. Prenger, PhD, Health Scientist Administrator, Review Branch, Room 7194, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, (301) 435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–32086 Filed 12–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Molecular Targets and Interventions in Pulmonary Fibrosis.

Date: March 6, 2003.

Time: 8:00 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Arthur N Freed, PHD, Review Branch, Room 7186, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–32087 Filed 12–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel; IAIMS Operations Grant—Loyola University.

Date: January 7–9, 2003.

Time: January 7, 2003, 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Loyola University Health System, Building 105, 2160 South First Avenue, Room 3904–D, Maywood, IL 60153.

Time: January 8, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Loyola University Health System, Building 105, 2160 South First Avenue, Room 3904–D, Maywood, IL 60153.

Time: January 9, 2003, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Loyola University Health System, Building 105, 2160 South First Avenue, Room 3904–D, Maywood, IL 60153.

Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–32083 Filed 12–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific review Special Emphasis Panel, December 18, 2002, 4 p.m. to December 18, 2002, 5 p.m., which was published in the **Federal Register** on November 29, 2002, 67 FR 71187.

The meeting time has been changed to 12 p.m. to 2 p.m. The meeting date and location remain the same. The meeting is closed to the public.

Dated: December 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–32082 Filed 12–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 BBBP–2 (11)M: Small Business: Augmentative and Assistive Communication.

Date: December 13, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 IFCN–4 (08) Neural Mechanisms of Modulation Study Section.

Date: December 17, 2002.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 IFCN–4 (02) Pharmacology of Memory and Feeding Study Section.

Date: December 17, 2002.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; T-Lymphocyte Development.

Date: December 18, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 IFCN–4 (03) Auditory Mechanisms Study Section.

Date: December 18, 2002.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; B-Lymphocyte Development.

Date: December 19, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892, 301–435–1220. *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–32085 Filed 12–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, B-Cell Development.

Date: December 19, 2002.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: George W. Chacko, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–32088 Filed 12–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for State Training and Evaluation of Evidence-Based Practices (Short Title: EBP Training and Evaluation).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Request for Applications (RFA), including Part I, State Training and Evaluation of Evidence-Based Practices (SM 03–003) (Short Title: EBP Training and Evaluation), and Part II, General Policies

and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds, FY 2003	Est. No. of awards	Project period
State Training and Evaluation of Evidence-Based Practices	March 24, 2003	$2,200,000	7	3 years.

The actual amount available for the award may vary depending on unanticipated program requirements and actual SAMHSA appropriations. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of State Training and Evaluation of Evidence-Based Practices grants. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund the grants. This program is authorized under Section 520A of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: SAMHSA's Mental Health Information Center, (800) 789–2647.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (click on ''Grant Opportunities'').

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center Mental Health Services (CMHS) is accepting applications for a fiscal year (FY) 2003 Best Practices funds for up to seven grants to engage and support States in implementing and evaluating evidence-based practices (EBPs). State grantees will select and implement one or more of the six EBPs for which SAMHSA has developed implementation Resource Kits. These grants will fund the States to (1) provide state-of-the-art training and continuing education to State mental health service providers and other stakeholders who are implementing the EBP(s), and (2) evaluate the implementation of selected EBPs in two or more communities within the State. Implementation of the EBP, aside from training/continuing education of the providers, must be supported through other sources of funds.

Eligibility: Only State mental health authorities may apply. States are defined in section 2 of the Public Health Service Act as including, in addition to the several States, only the District of Columbia, Guam, Commonwealth of Puerto Rico, Northern Mariana Islands, Virgin Islands, American Samoa and Trust Territory of the Pacific Islands (now Palau, Micronesia, and the Marshall Islands.) Only State mental health authorities are eligible, because they have primary responsibility for provision of public mental health services in the United States. As such, only the State mental health authorities generally can mandate the relationship between training and service provision that is necessary to make the implementation and evaluation of EBPs in multiple communities across the State a success.

Availability of Funds: It is expected that approximately $2.2 million will be available for seven awards in FY 2003. The average annual award will range from $250,000 to $325,000 in total costs (direct and indirect). Applications with proposed Federal budgets that exceed $325,000 will not be reviewed.

Period of Support: Awards may be requested for up to 3 years.

Criteria for Review and Funding:—General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions on substantive issues regarding the program, eligibility, and funding of reviewed applications, contact: Crystal R. Blyler, Ph.D., Social Science Analyst, CMHS/SAMHSA, Parklawn Building, Room 11C–22, 5600 Fishers Lane, Rockville, MD 20857, (301) 594–3997 (direct), (301) 443–3653 (central phone), [e-mail] *cblyler@samhsa.gov.*

For questions on budget, completion of items on forms, and administrative issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, *E-Mail: shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's Web site under ''Assistance with Grant Applications''. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: December 16, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–32052 Filed 12–19–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–51]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* versus *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the

landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *DOT:* Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: December 12, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 12/20/02

Unsuitable Properties

Buildings (by State)

California

Bldg. 34
Coast Guard Integrated Support Command
Alameda Co: CA
Landholding Agency: DOT
Property Number: 87200240006
Status: Unutilized
Reason: Secured Area

Florida

U.S. Classic Courthouse, 601 N. Florida Ave
Tampa Co: FL 33602–
Landholding Agency: GSA
Property Number: 54200240018
Status: Excess
Reason: Contamination—toxic mold
GSA Number: 4–G–FL–1208–1A

Unsuitable Properties

Land (by State)

Virginia

1.6 acres
Naval Amphibious Base
Norfolk Co: VA 23521–2616
Landholding Agency: Navy
Property Number: 77200240063
Status: Unutilized
Reason: Secured Area

[FR Doc. 02–31703 Filed 12–19–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Environmental Impact Statement and Comprehensive Conservation Plan for the Nisqually National Wildlife Refuge for Review and Comment, and Notice of Public Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and notice of public meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that a Draft Environmental Impact Statement and Comprehensive Conservation Plan (Draft EIS/CCP) for Nisqually National Wildlife Refuge (Refuge) is available for review and comment. This Draft EIS/CCP, prepared pursuant to the National Wildlife Refuge System Administration Act, as amended and the National Environmental Policy Act of 1969, describes the Service's proposal for management of the Refuge for the next 15 years. Proposed changes to the Refuge being considered include the restoration of historic estuarine habitat and dike removal; a proposed expansion of the approved Refuge boundary; changes to the trail system; opening the Refuge to waterfowl hunting; and establishing a speed limit of 5 miles per hour in Refuge waters for all water craft. Also available for review with the Draft EIS/CCP, are draft compatibility determinations for waterfowl hunting; recreational fishing; boating; environmental education; wildlife observation, photography and interpretation; research; and haying.

DATES: Written comments must be received at the address below by February 18, 2003. Public meetings will be held on:

1. Wednesday, January 15, 2003, 3 p.m. to 8:30 p.m., Olympia, WA.
2. Thursday, January 16, 2003, 3 p.m. to 8:30 p.m., Tacoma, WA.

ADDRESSES: Comments on the Draft EIS/CCP should be addressed to: Jean Takekawa, Refuge Manager, Nisqually National Wildlife Refuge Complex, 100 Brown Farm Road, Olympia, Washington 98516. Comments may also be submitted at the public meetings or via electronic mail to *FW1PlanningComments@fws.gov.* Please type ''Nisqually NWR'' in the subject line. The public meeting locations are:

1. Nisqually National Wildlife Refuge, 100 Brown Farm Road, Olympia, WA.
2. Tacoma Public Library, 1102 Tacoma Avenue S., Tacoma, WA.

FOR FURTHER INFORMATION CONTACT: Refuge Manager, Nisqually National Wildlife Refuge Complex, 100 Brown Farm Road, Olympia, Washington 98516, (360) 753–9467, or Michael Marxen, U.S. Fish and Wildlife Service, Pacific Northwest Planning Team, 16507 Roy Rogers Road, Sherwood, Oregon 97140, (503) 590–6596.

SUPPLEMENTARY INFORMATION: Copies of the Draft EIS/CCP may be obtained by writing to U.S. Fish and Wildlife Service, Attn: Michael Marxen, Pacific Northwest Planning Team, 16507 Roy Rogers Road, Sherwood, Oregon, 97140. Copies of the Draft EIS/CCP may be viewed at this address or at the Nisqually National Wildlife Refuge Complex, 100 Brown Farm Road, Olympia, Washington 98516. The Draft EIS/CCP will also be available for viewing and downloading online at *http://pacific.fws.gov/planning.* Printed documents will also be available for review at the following libraries: Timberland Community Library in Olympia; Tacoma Public Library; University of Washington—Suzallo Library; William J. Reed Library in Shelton, WA; and the Evergreen State College Library.

Background

Nisqually National Wildlife Refuge is located in western Washington at the southern end of Puget Sound in Thurston and Pierce counties. The Refuge is one of nearly 540 refuges in the National Wildlife Refuge System managed by the U.S. Fish and Wildlife Service. Wildlife conservation is the priority of National Wildlife Refuge System lands. Nisqually Refuge contributes substantially to the conservation of fish, wildlife, and native habitats of the Puget Sound region. The Refuge protects one of the few relatively undeveloped large estuaries remaining in Puget Sound. It provides crucial habitat for migratory birds of the Pacific Flyway, including many waterfowl, shorebirds, waterbirds, and seabirds. The Refuge also contains regionally important migration and rearing habitat for salmon, particularly the threatened fall chinook salmon. Each year, more than 100,000 visitors come to view wildlife and enjoy and learn about Refuge habitats and the wildlife they support.

Proposed Action

The Proposed Action is to adopt and implement a Comprehensive Conservation Plan (CCP) for the Nisqually Refuge that best achieves the Refuge's purpose, vision, and goals; contributes to the National Wildlife Refuge System mission; addresses the

significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. The Service analyzed four alternatives for future management of the Refuge; of these, it is proposed that Alternative D would best achieve all of these elements, and it has, therefore, been identified as the Preferred Alternative.

Purpose and Need for Action

A CCP is needed to guide the long term management of the highest priority natural resource needs at Nisqually Refuge. The Refuge is currently managed under an outdated 1978 Conceptual Management Plan. The purpose of the CCP is to provide management guidance for the Refuge including guidance for land protection, habitat restoration, fish and wildlife conservation, and visitor services to more effectively achieve Refuge goals and purposes. Implementing the CCP will provide the Refuge with an opportunity to enhance its critical role in the conservation and management of the fish and wildlife resources of Nisqually River delta and lower watershed and continue developing high quality environmental education and wildlife interpretation for Refuge visitors.

Eighty percent of estuarine habitat has been lost in Puget Sound in the last 150 years, contributing to the decline of many fish and wildlife species that depend on estuaries, including several salmon species. The Refuge's diked freshwater wetlands were historically estuarine and habitat quality has declined. The south Puget Sound region is undergoing dramatic changes in population and landscape, as it becomes more urban. As Refuge visitor use has increased, so have conflicts among visitors and concerns over meeting the needs of fish and wildlife. In response to these changes and management issues the CCP needs to consider increased land protection, restoration of the historic estuarine system, improved wildlife protection, enhanced environmental education and compatibility of wildlife-dependent recreation activities.

Alternatives

This Draft EIS/CCP identifies and evaluates four alternatives for managing Nisqually National Wildlife Refuge for the next 15 years. Each alternative describes a combination of habitat and public use management prescriptions designed to achieve the Refuge purposes, goals, and vision. The four alternatives are briefly described below, followed by additional features common to some or all of the alternatives.

Alternative A, the ''No Action'' alternative assumes no change from past management programs and is considered the baseline from which to compare the other alternatives. As funding becomes available, the Refuge would continue to seek acquisition of interests in the remaining 1,011 acres within the current approved Refuge boundary (3,936 acres) as lands become available from willing sellers, but no expansion beyond the current approved Refuge boundary would occur. There would be no major changes in habitat management or public use programs. The environmental education program would continue to serve approximately 5,000 students per year. A new education facility would be required to ensure a safe, high quality experience under all alternatives. No new internal dikes or impoundments would be created, but external dikes (28,000 linear feet) would need extensive repairs and continued maintenance.

Alternative B would provide for moderate expansion of the approved Refuge boundary (a 2,407-acre addition for a total of 6,343 acres). It places new management emphasis on the restoration of estuarine habitat and improved freshwater wetland management. Approximately 318 acres (30%) of the diked interior would be restored to muted estuarine habitat by creating bridged breaches and retaining dikes. Approximately 140 acres (15%) of diked habitat would be restored to fully functional estuarine habitat in the northern half of the Shannon Slough system along McAllister Creek, requiring only limited dike removal. All remaining exterior dikes would require extensive repairs to prevent seepage and failure. Management of 542 acres of freshwater and grassland habitats would be improved in the remaining diked area by converting some grasslands to seasonal freshwater wetlands and ponds, and constructing five internal management units with new interior dikes, creating a higher proportion of freshwater habitat. The current environmental education program would be improved and expanded to the largest degree of all action alternatives, serving 20,000 students per year. There would be fewer changes to the public wildlife observation trail system than in other action alternatives, and Refuge lands would remain closed to waterfowl hunting, with the closure posted and enforced to eliminate unauthorized hunting on the Refuge. Hunting would still occur on Washington Department of Fish and Wildlife (WDFW) lands; therefore, a portion of the wildlife observation trail would continue to be closed during hunting season to avoid conflicts with hunters.

Alternative C would provide for the same expansion of the Refuge boundary as in Alternative B (a 2,407-acre addition). However, it places a stronger emphasis on the restoration of estuarine habitat, while improving freshwater wetland and riparian habitats. This alternative would restore approximately 515 acres (50%) of the diked interior to estuarine habitat. This alternative would retain the Shannon Slough system along McAllister Creek as diked freshwater habitat. Exterior dikes would be removed in the northern half of the 1,000-acre diked area, and all remaining exterior dikes would require extensive repairs to prevent seepage and failure. Riparian habitat would be enhanced along the Nisqually River by restoring forested, surge plain habitat on 38 acres north of the Twin Barns. Management of the remaining 447 acres of freshwater and grassland habitats would be improved, with a higher proportion of freshwater habitat created by converting some grasslands to seasonal freshwater wetlands and ponds as well as constructing five internal management units with new interior dikes. The environmental education program would be improved and expanded to serve 15,000 students, fewer than in Alternative B, to provide sufficient staff time to operate a waterfowl hunt program. Moderate changes would occur in the trail system, reducing the 5.5-mile loop to 3.75 miles; a new trail would be developed on Tribal and Refuge properties east of the Nisqually River. Approximately 713 acres of Refuge land would be opened to waterfowl hunting limited to 3 days per week and consolidated in a block with WDFW lands (totaling 1,170 acres). This would require an agreement with WDFW to limit hunting on their lands in McAllister Creek. New fishing opportunities would be provided including bank fishing on the east side of the Nisqually River, improved bank fishing at Trotter's Woods south of I–5, and disabled access fishing at Luhr Beach, if acquired.

Alternative D would provide a larger approved Refuge boundary expansion (a 3,479-acre addition for a total of 7,415 acres). It also increases estuarine restoration while improving freshwater wetland and riparian habitats on the Refuge. Under Alternative D, 699 acres (70%) of the diked area would be converted to estuarine habitat, resulting in removal of a large part of the exterior dike. Management of the remaining 263-acre area within the dike would be greatly improved as freshwater wetland

and riparian habitats and five internal management units would be constructed with new interior dikes. As in Alternative C, 38 acres of forested, surge plain habitat would be restored to increase the acreage of this important habitat along the Nisqually River. The environmental education program would be improved and expanded (15,000 students per year), although not to the extent of Alternative B, to provide sufficient staff time to operate a waterfowl hunt program. The greatest changes would occur in the wildlife observation trail system of any alternative, reducing the 5.5-mile loop to a 3.5-mile round trip trail no longer in a loop configuration; a new trail would be developed on Tribal and Refuge properties east of the river. A smaller portion of Refuge lands (191 acres) would be opened to hunting 7 days per week, with no changes to hunting on WDFW lands; however, a portion of the main trail would be seasonally closed. Bank fishing on McAllister Creek would no longer be offered due to dike removal, but new fishing opportunities could be provided in the future, if appropriate lands were acquired along McAllister Creek south of I–5, as well as those described under Alternative C.

Actions Common to All Action Alternatives

In addition, the following components are proposed to be implemented under alternatives B, C, and D. Walk-in waterfowl hunting opportunities would be considered if sufficient lands were acquired south of I–5, which would provide adequate wildlife sanctuary and minimal conflict with other priority uses. A speed limit of 5 mph for all water craft would be established in all Refuge waters to provide wildlife and habitat protection and reduce conflicts with other visitors. Service policies prohibiting consumptive uses in the Research Natural Area (RNA) in the northeast part of the Refuge would be enforced, including fishing, shell fishing, and waterfowl hunting. The RNA would be closed to all boating from October 1 to March 31 to provide a seasonal sanctuary for migratory birds and other wildlife.

Public comments are requested, considered, and incorporated throughout the planning process in numerous ways. Public outreach has included open houses, public meetings, technical workgroups, planning update mailings, and **Federal Register** notices. Two previous notices were published in the **Federal Register** concerning this Draft EIS/CCP (October 9, 1997 and February 9, 2000). After the review and comment period ends for this Draft EIS/CCP, comments will be analyzed and considered by the Service. A Final EIS will then be prepared and published which will include substantive comments received and provide the Service's responses. Changes made to the selected alternative will also be identified in the Final EIS. A Record of Decision and final CCP will then be published.

All comments received from individuals on environmental impact statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f)) and other Service and Departmental policies and procedures.

Dated: November 13, 2002.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–32046 Filed 12–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: Geological Survey, Department of the Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with LockClickPrint, Inc., of Los Lunas, New Mexico. The purpose of the CRADA is to develop and test the marketability of high-quality, museum art products based on satellite, aerial photography, and mapping source data from the USGS. Any other organization interested in pursuing a partnership for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Branch of Business Development, U.S. Geological Survey, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4621, facsimile (703) 648–4706; Internet *''bduff@usgs.gov''.*

FOR FURTHER INFORMATION CONTACT: Beth L. Duff, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: October 28, 2002.

Robert A. Lidwin,

Chief of Staff, Geography.

[FR Doc. 02–32049 Filed 12–19–02; 8:45 am]

BILLING CODE 4310–Y7–U

DEPARTMENT OF THE INTERIOR

Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its third meeting. The meeting location is the U.S. Geological Survey, John W. Powell National Center, Room 3B457, 12201 Sunrise Valley Drive, Reston, Virginia 20192. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will review a draft of the 5-year plan of the U.S. Geological Survey's National Earthquake Hazards Reduction Program. This will include a critique of the goals and objectives of the Program over the next 5 years in earthquake hazards assessments, in research on earthquake processes and effects, and in earthquake monitoring and notification.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: January 8, 2003, commencing at 9 a.m. and adjourning at 4:30 p.m. on January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. John R. Filson, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6785.

Dated: December 3, 2002.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 02–32048 Filed 12–19–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–095–03–6333–JI: GP03–0005]

Notice of Temporary Closure of Public Lands; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of public lands in Lane County, Oregon.

SUMMARY: Notice is hereby given that approximately 200 acres of certain public lands in Lane County, Oregon are temporarily closed to all public use, with exception to walking, hiking and pedestrian sightseeing. Those uses prohibited from occurring in the area include driving, parking, camping, discharge of firearms, and all equestrian uses. This closure is effective December 1, 2002, through November 30, 2003. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this temporary closure include all Federal lands within the City of Eugene Urban Growth Boundary located in Section 29, Township 17 South, Range 4 west of the Willamette Meridian lying east of Greenhill Road, south of Royal Ave., west of Terry street and a line running south from the end of Terry Street to the Southern Pacific Railroad tracks, and north of the Southern Pacific Railroad tracks. Specifically, the lands are identified as follows: Federal lands located in Section 29, Township 17 south, Range 4 west of the Willamette Meridian, Oregon.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau, City of Eugene, and Corps of Engineers employees; State, local and Federal law enforcement and fire protection personnel; agents for the Cone wetland mitigation sites; the contractor authorized to construct the Lower Amazon Wetland Restoration Project and its subcontractors; the contractor authorized by the City of Eugene to construct the Fern Ridge Bicycle Path and related recreation facilities and its subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this temporary closure is to provide for public safety, facilitate construction of the Lower Amazon Wetland Restoration Project and Fern Ridge Bicycle Path and related facilities, and protection of property and equipment during the mobilization, construction and de-mobilization phases of the Lower Amazon Wetland Restoration and Fern Ridge Bicycle Path construction projects.

DATES: This closure is effective from December 1, 2002, through November 30, 2003.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Pat Johnston, Wetlands Project Manager, Eugene District Office, at (541) 683–6181.

Dated: October 10, 2003.

Rick Colvin,

Acting Field Manager, Siuslaw Resource Area.

[FR Doc. 02–32063 Filed 12–19–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–100–03–1820–PG]

Science Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Science Advisory Board will meet as indicated below.

DATES: The meeting will be held January 21, 2003, in Room 7000A at 1849 C Street, NW., Washington, DC. The public comment period will begin at approximately 4:30 p.m., and the meeting will adjourn at approximately 5 p.m.

FOR FURTHER INFORMATION CONTACT: Lee Barkow, Bureau of Land Management, Denver Federal Center, Building 50, P.O. Box 25047, Denver, CO, 80225–0047, 303–236–6454.

SUPPLEMENTARY INFORMATION: The Science Advisory Board advises the Director of the Bureau of Land Management, on a variety of science issues. At this meeting, topics we plan to discuss include:

Introduction and Opening Comments
Review of Last Meeting's Decisions/Commitments
Director's New Science Issues
Report on BLM Science Activities for FY 2002
Briefing on the President's Healthy Forest Initiative
Presentation ''Save our Fossils from Extinction''
Briefing on the BLM/DOE Partnerships in Science
Presentation and Discussion on the Science Strategy Implementation and Staffing/Organization Plan
Discussion on University Curriculum for the Next Generation BLM Employee

The agenda is subject to revision. All meetings are open to the public. The public may present written comments to the Board. Each formal Board meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation, or other reasonable accommodations, should contact the BLM as provided in **FOR FURTHER INFORMATION CONTACT.**

Lee Barkow,

Director, National Science and Technology Center.

[FR Doc. 02–31997 Filed 12–19–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–63022]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) (R&PP). The City of Las Vegas proposes to use the land for a public park. Portions of these lands were previously segregated and leased under the R&PP Act as serial numbers N–61840, N–41567–31 and N–41567–36 and those leases have been relinquished. The purpose of this action is to combine all of these lands under BLM serial number N–63022.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E., sec. 21
E½NE¼NE¼, NW¼NE¼SE¼NE¼, S½NE¼SE¼NE¼, NW¼SE¼NE¼, S½SE¼NE¼, NE¼SE¼

Containing 97.5 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. An easement 50 feet in width along the east boundary, 30 feet in width along the south boundary, 50 feet in width along the north boundary, and 30 feet in width along the west boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

2. Those rights for public utility purposes which have been granted to Nevada Power Company by Permit Nos. N–38447 and N–66254, the City of Las Vegas by Permit Nos. N–61048 and N–75501, and the Las Vegas Valley Water District by Permit No. N–74511 under the Act of October 26, 1978 (FLPMA).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: October 24, 2002.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 02–32062 Filed 12–19–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–4310–ET; GPO–02–0002; IDI–34179]

Notice of Proposed Withdrawal and Opportunity for a Public Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice notifies the public that the Forest Service proposes to withdraw approximately 150 acres of National Forest System lands in the Panhandle National Forest from nonmetalliferous mining for a period of 20 years. The lands contains gem quality garnet deposits and lies adjacent to the nationally known Emerald Creek garnet deposit. The withdrawal would protect the streams and facilitate planned development of the public garnet collection area. Subject to valid existing rights, this notice segregates the National Forest System lands described below for up to 2 years from location and entry under the United States mining laws. The lands have been and will remain open to such forms of disposition as may by law be made of National Forest System lands and mineral leasing.

DATES: The effective date of the Panhandle National Forest withdrawal application is December 20, 2002. Comments on the new proposed withdrawal must be received by March 20, 2003.

ADDRESSES: Comments should be sent to the State Director, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3867.

SUPPLEMENTARY INFORMATION: On May 23, 2002, the United States Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Boise Meridian

Panhandle National Forest

T. 42 N., R.1 W.,
- Sec. 10, NE¼SW¼SE¼SE¼, and S½SW¼SE¼SE¼, and N½SE¼SE¼SE¼, and SW¼SE¼SE¼SE¼;
- Sec. 11, NW¼SE¼SW¼SW¼, and NE¼NW¼,SE¼SE¼;
- Sec. 12, E½W½SW¼NE¼, and NE¼SW¼NW¼, and NW¼SW¼SE¼NW¼, and SE¼SW¼SE¼NW¼, and W½NE¼NE¼SW¼, and NE¼NW¼NE¼SW¼, and SE¼NE¼SW¼, and SE¼SE¼NE¼SE¼, and E½E½NW¼SE¼, and E½NW¼NW¼SE¼, and W½SW¼NW¼SE¼, and NE¼SE¼SE¼, and W½SE¼SE¼SE¼;
- Sec. 13, NE¼NE¼NE¼, and NE¼SE¼NE¼NE¼, and S½SE¼SE¼NE¼, and SW¼SE¼SW¼NW¼, and SE¼SW¼SE¼NW¼, and SE¼SW¼SE¼SW¼;
- Sec. 14, S½SW¼SW¼NE¼, and SW¼NE¼NE¼NW¼, and NW¼NW¼NE¼NW¼, and SE¼SW¼SE¼NW¼, and S½SE¼SE¼NW¼,
- Sec. 15, NW¼NW¼NE¼NE¼, and N½NE¼NW¼NE¼

The area described contains approximately 150.00 acres in Latah County, Idaho.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Idaho State Director, Bureau of Land Management, at the address stated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for

the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Dated: June 19, 2002.

Jimmie Buxton,

Branch Chief for Lands and Minerals.

[FR Doc. 02–32061 Filed 12–19–02; 8:45 am]

BILLING CODE 4310–GG–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1021 (Preliminary)]

Malleable Iron Pipe Fittings From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury, by reason of imports from China of malleable iron pipe fittings, provided for in subheading 7307.19.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On October 30, 2002, a petition was filed with the Commission and Commerce by Anvil International, Inc. of Portsmouth, NH, and Ward Manufacturing, Inc. of Blossburg, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of malleable iron pipe fittings from China. Accordingly, effective October 30, 2002, the Commission instituted antidumping duty investigation No. 731–TA–1021 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 6, 2002 (67 FR 67645). The conference was held in Washington, DC, on November 20, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 16, 2002. The views of the Commission are contained in USITC Publication 3568 (December 2002), entitled Malleable Iron Pipe Fittings from China: Investigation No. 731–TA–1021(Preliminary).

By order of the Commission.

Issued: December 16, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–32035 Filed 12–19–02; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–038]

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 6, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1022 (Preliminary)(Refined Brown Aluminum Oxide from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on January 6, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before January 13, 2003).
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: December 17, 2002.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–32215 Filed 12–18–02; 10:39 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Digital Subscriber Line Forum

Notice is hereby given that, on October 16, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Digital Subscriber Line Forum (''DSL'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Communications Test Design, Tucker, GA; and Lattelekom SIA, Riga, Lativia have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, DSL filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 1995 (60 FR 38058).

The last notification was filed with the Department on July 16, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 16, 2002 (67 FR 53619).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–32053 Filed12–19–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—GE Global Research

Notice is hereby given that, on November 7, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), GE Global Research has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are GE Global Research, Niskayuna, NY; and Molecular Nanosystems, Palo Alto, CA. The nature and objectives of the ventures are to develop and demonstrate ''Template Synthesis for Nanostructured Materials.''

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–32055 Filed 12–19–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production act of 1993—Information Storage Industry Consortium

Notice is hereby given that, on October 28, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Information Storage Industry Consortium (''INSIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NSA, Ft. Meade, MD; and SONY, Boulder, CO have been added as parties to this venture. The following university has joined INSIC as a university associate member: University of Manchester, Manchester, United Kingdom.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and INSIC intends to file additional written notifications disclosing all changes in membership.

On June 12, 1991, INSIC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 13, 1991 (56 FR 38465).

The last notification was filed with the Department on may 3, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2002 (67 FR 42281).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–32054 Filed 12–19–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Marion ''Molly'' Fry, M.D.; Revocation of Registration

On March 7, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Marion ''Molly'' Fry, M.D. (Dr. Fry), proposing to revoke her DEA Certificate of Registration, BM4859178, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Fry's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4). The show cause order also notified Dr. Fry that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Fry at her registered location in Cool, California, and DEA received a signed receipt indicating that it was received on March 12, 2002. A second copy of the Order to Show Cause was sent by certified mail to Dr. Fry at her residence in Greenwood, California (the Greenwood residence). However, the second copy was returned to DEA as ''not deliverable.'' DEA's Sacramento District Office then sent the Order to Show Cause to Dr. Fry's residence by Federal Express.

DEA has not received a request for hearing or any other reply from Dr. Fry or anyone purporting to represent her in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Fry is deemed to have waived her hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator's review of the investigative file reveals that Dr. Fry graduated from Western Washington University in Bellingham, Washington with a bachelor's degree in both chemistry and biology. Dr. Fry subsequently graduated from the University of California—Irvine in 1985 with a degree in medicine. Shortly thereafter, Dr. Fry obtained a medical license in the State of California where she initially specialized in general medicine. Dr. Fry is currently licensed to practice medicine in the State of California.

In October 1999, Dr. Fry and her husband Dale Schafer (Mr. Schafer) opened the California Medical Research Center located in Cool, California. Cool is a small mountain community in El Dorado County, California. The investigative file reveals that Mr. Schafer is an attorney, licensed to practice law in the State of California.

The Deputy administrator finds that as a result of a routine DEA interdiction operation in August 2000, an individual was arrested on an Amtrak train possessing ten pounds of processed

marijuana. A search of the individual's belongings revealed an address to a ranch property in El Dorado County owned by an individual hereinafter referred to as ''RS.'' During the subsequent execution of a search warrant at RS' home, DEA agents found over 1,000 mature marijuana plants. Also found during the execution of the search warrant were approximately 50 sets of documents consisting of medical recommendations from Dr. Fry to several individuals, and what purported to be registration forms for a marijuana buyers club called Sierra CPO (Cannabis Patients Only). The medical recommendations from Dr. Fry were for ailments such as anxiety, insomnia, asthma, pre-menstrual syndrome and restless leg syndrome. Each of the recommendation certificates included a waiver provision where the client signed an acknowledgment that marijuana use remains a violation of federal law.

DEA subsequently initiated an investigation of Dr. Fry and Mr. Schafer when on December 28, 2000, the agency received a telephone call from the District Security Representative of United Parcel Service (UPS) regarding seven packages that were received at a UPS location in Rocklin, California. The UPS representative informed DEA that the seven packages each contained gram quantities of marijuana and were addressed to individuals at different residential locations. The return address on each of the seven packages listed ''DALE, COOL CORNER VIDEO,'' at a location in Cool, California. The seven packages were seized. DEA subsequently learned that at least one of the packages was sent through UPS by Michael John Harvey, an employee of Dr. Fry and Mr. Schafer.

On January 2, 2001, DEA was contacted by Mr. Schafer who stated that he was the attorney representing the recipients of the marijuana packages. Mr. Schafer demanded the return of the packages and stated that his clients had a legal right to them. DEA subsequently informed Mr. Schafer that the marijuana packages would not be returned to his clients and were seized because they were Schedule I controlled substances unlawfully shipped through a private mail carrier, in violation of 21 U.S.C. 843(b).

During an investigation by DEA of a marijuana buyer's club in late 2000, it was learned from various clients whose marijuana recommendation forms were previously found at RS' ranch that Dr. Fry provided the recommendations under questionable circumstances. Several clients reported that their visits to Dr. Fry's office lasted no more than 20 minutes, and that time was usually spent with Mr. Schafer. Mr. Schafer would typically advise clients about the legal aspects of medical marijuana, and that the drug was illegal under federal law. Mr. Schafer also reportedly advised clients on how to respond if arrested while possessing marijuana.

According to some of the clients, consultations involving Dr. Fry were brief and consisted of no medical examination or review of medical records. These clients further reported that despite the lack of a medical examination, Dr. Fry would routinely issue recommendation certificates for marijuana.

One person familiar with Dr. Fry's practice reported that Dr. Fry and Mr. Schafer advised their staff to turn away potential clients who were too ''clean-cut'' because of a concern that these clients might be undercover law enforcement agents. DEA learned that Dr. Fry and Mr. Schafer charged $150 per visit which were referred to as a ''medical/legal consultation'' and the couple saw as many as 100 clients each week. DEA also received information that client fees were deposited into the bank account of Mr. Schafer's law practice.

DEA obtained further information that Mr. Schafer kept processed marijuana in a duffel bag in Dr. Fry's office, and on several occasions, he sold processed marijuana to individuals. On one occasion, Mr. Schafer purchased three pounds of processed marijuana from a third party for $3,600.00 per pound, and gave a portion of the marijuana to another individual to sell for him.

A source familiar with Dr. Fry's practice reported to DEA that in or around March 2000, hundreds of marijuana ''clones'' were observed being grown in the residential garage of Dr. Fry and Mr. Schafer. A marijuana ''clone'' is a branch clipping from a healthy, female marijuana plant. The clipping is then placed into a growing medium to allow the branch to establish a root system and mature into a marijuana plant. The clones are reported to be of high quality and high THC (the primary psychoactive chemical component of marijuana). The source further observed ''grow lights'' (a type of fluorescent light used for indoor growing of marijuana), fertilizer, plant nutrients, and cubes of a growing medium into which clones are inserted to take root.

DEA also received information that on more than 100 occasions, Mr. Schafer reportedly offered to sell marijuana ''growing kits'' to clients who came to Dr. Fry's office to receive recommendation certificates. DEA learned that these growing kits contained six marijuana clones plants, a growing tub, and grow lights. Payment for the kits were made to a business concern owned by Dr. Fry and Mr. Schafer known as ''Cool Madness.'' The kits were later delivered to clients by, among others, the son of Dr. Fry and Mr. Schafer, their daughter and her boyfriend. DEA agents also obtained information from a source familiar with Dr. Fry and Mr. Schafer that on April 16, 2000, Mr. Schafer sold approximately 40 marijuana plants to an individual in exchange for marijuana smoking paraphernalia.

DEA's investigation further revealed that in February 2001, El Dorado County, California law enforcement officials received an anonymous tip from a source that claimed that he had just completed an inspection or appraisal of the residential property of Dr. Fry and Mr. Schafer. The source reported seeing marijuana growing in the yard of the residential location. This information was later corroborated by aerial surveillance conducted by the El Dorado County Sheriff's Office (EDCSO) of the Greenwood residence of Dr. Fry and Mr. Schafer. During an aerial flight on September 26, 2001, a detective for EDCSO observed marijuana plants growing in an outdoor growing area as well as inside the greenhouse of that property.

The investigative file further reveals that in April 2000, a detective for the Western El Dorado Narcotic Enforcement Team (WENET) received a telephone call from a woman regarding her 19-year old son, who received a written recommendation for the use of marijuana from Dr. Fry. The woman informed WENET that in addition to the written recommendation, her son received a flyer stating that marijuana was ''an alternate way to party. ''

On January 11, 2001, undercover agents for WENET conducted an undercover operation involving the office of Dr. Fry and Mr. Schafer. The primary objective of the undercover visit was to have an undercover agent obtain a recommendation for marijuana from Dr. Fry or one of her associates, without the agent providing medical records or having a physical exam performed.

Upon entering the office of Fry/Schafer, the agent was shown a video on subjects related to marijuana use. Mr. Schafer then questioned the undercover agent as to why the agent came to the office. Mr. Schafer then told the agent that the number one reason people were written a marijuana recommendation was for chronic pain.

During that same undercover visit, the agent then met with Dr. Fry's physician assistant. The physician assistant questioned the undercover agent regarding the agent's health. The agent then complained of a false back injury suffered in a car accident. After a cursory examination (which consisted of the agent grabbing and squeezing the fingers of the physician assistant), the physician assistant concluded that one side of the agent's back was weaker than the other side. Despite the cursory nature of the exam and the lack of a medical record, the undercover agent was provided with a written recommendation for marijuana by Dr. Fry's physician assistant.

In February 2001, an undercover WENET agent again went to the office of Dr. Fry and Mr. Schafer posing as a potential client in need of a recommendation certificate for marijuana. In a recorded conversation, Dr. Fry was heard telling the undercover agent that she and her husband ran a business selling marijuana-growing kits. Dr. Fry was also heard complaining to the agent that her husband was not making enough money with the business. Dr. Fry then offered to provide to the undercover agent marijuana clones, lights, and plant nutrients to grow marijuana, and if the agent signed up, she would provide the agent with low-cost organic marijuana and growing equipment. Dr. Fry further advised the agent to buy everything from she and her husband because a local store was ''staked out by the narcs.''

On September 28, 2001, DEA and WENET agents executed a federal search warrant at Dr. Fry's registered location in Cool, California. Among the items seized from that location was drug paraphernalia. On that same date, a second federal search warrant was executed at the Greenwood residence. During a search of the living room area, agents seized several grocery bags of marijuana. Agents also seized from the master bedroom and bedroom closets numerous brown grocery bags and large ziplocks plastic bags containing marijuana and/or marijuana buds, two scales, a bong as well as other drug paraphernalia.

Marijuana is listed in Schedule I of the Controlled Substance Act (CSA). 21 U.S.C. 812(c); 21 CFR 1308.11. The CSA defines Schedule I controlled substances as those drugs or other substances that have ''a high potential for abuse,'' ''no currently accepted medical use in treatment in the United States,'' and ''a lack of accepted safety for use * * * under medical supervision.'' Also, every drug listed in Schedule I of the CSA lacks approval for marketing under the Federal Food Drug and Cosmetic Act (FDCA). Therefore, marijuana has not been approved for marketing as a drug by the Food and Drug Administration (FDA).

The deleterious effects of marijuana use have been outlined extensively in previous DEA final orders and will not be repeated at length here. See 66 FR 20038 (2001); 57 FR 10499 (1992). However, it bears mentioning again that the numerous significant short-term side effects and long terms risks linked to smoking marijuana, including damage to brain cells; lung problems such as bronchitis and emphysema; a weakening of the body's antibacterial defenses in the lungs; the lowering of blood pressure; trouble with thinking and concentration; fatigue; sleepiness and the impairment of motors skills, *Id.*

Marijuana was placed in Schedule I for the same fundamental reason that it has never been approved for sale by the FDA; there have never been any sound scientific studies which demonstrate that marijuana can be used safely and effectively as medicine. See 66 FR 20038 (April 18, 2001) (DEA final order denying petition to initiate proceeding to reschedule marijuana). The Supreme Court recently explained the legal significance of marijuana's placement in Schedule I of the CSA:

> Whereas some other drugs [those in Schedules II through V] can be dispensed and prescribed for medical use, *see* 21 U.S.C. 829, the same is not true for marijuana. Indeed, for purposes of the Controlled Substances Act, marijuana has ''no currently accepted medical use'' at all.
>
> *United States* v. *Oakland Cannabis Buyers' Cooperative,* 532 U.S. 483, 491 (2001).

Federal law prohibits human consumption of marijuana outside of FDA-approved, DEA registered research. *Id.* at 490 (''For marijuana (and other drugs that have been classified as 'schedule I' controlled substances), there is but one express exception, and it is available only for Government approved research projects, section 823(f).''). Further, as the Supreme Court made clear, there is no ''medical necessity exception'' that allows anyone to violate the CSA when it comes to marijuana, ''even when the patient is 'seriously ill' and lacks alternative avenues for relief.'' *Id.* at 495 n. 7.

Despite provisions of both the CSA and the FDCA regarding the non-acceptance of marijuana as an adjunct to medical treatment, several states have enacted laws in recent years (primarily through ballot initiatives) authorizing marijuana for medical purposes. These state provisions authorize a physician to provide an oral or written ''recommendation,'' ''approval,'' or some other affirmative statement indicating support for a particular patient's use of marijuana.

Effective November 6, 1996, voters in California adopted Proposition 215, otherwise known as the Compassionate Use Act of 1996 (hereinafter referred to as ''Proposition 215''). Cal. Health & Safety Code § 11362.5 (2002). Proposition 215 provides that persons may grow or possess marijuana ''upon the written or oral recommendation or approval of a physician.'' Cal. Health & Safety Code § 11362.5. Thus, a physician's ''recommendation'' serves as the ''permission slip'' under California law that allows the patient (the recipient of the recommendation) to grow or possess marijuana. Although California law does not actually allow anyone to distribute marijuana, numerous marijuana traffickers began to openly grow and distribute marijuana under the purported authority of state law following the passage of Proposition 215.

One example of this trend was the sudden appearance of ''cannabis clubs,'' one of which was the subject of the *Oakland Cannabis Buyers' Cooperative* Case. The Supreme Court's ruling in *Oakland Cannabis Buyers' Cooperative* reaffirmed what was already clear in the CSA: that marijuana is not medicine under federal law and that federal law prohibits the manufacture, distribution, and possession of marijuana—even in a state such as California, which has modified its state law to treat marijuana as medicine.

The legal significance of marijuana ''recommendations'' was explained recently by a federal court:

> [A] physician who recommends marijuana in a state that recognizes that such an act facilitates the ability of a patient to receive marijuana is essentially writing a prescription. The same rules should apply. Both situations involve a violation of the CSA, and, thus, both situations could warrant the revocation of a physician's [DEA registration].
>
> Moreover, DEA has the authority to revoke the registrations of physicians whose conduct may threaten public health or safety.
>
> ***Given marijuana's status as a Schedule I drug, the government could reasonably conclude that a prescription or recommendation from a physician to use marijuana could threaten public health and safety.
>
> *Pearson* v. *McCaffrey,* 139 F.Supp.2d 113, 124 (D.D.C. 2001).

However, before *Pearson* was decided, and before the Supreme Court issued its ruling in *Oakland Cannabis Buyers' Cooperative,* the United States District Court for the Northern District of California issued an unpublished opinion that reached a different

conclusion than the court in Pearson. In *Conant* v. *McCaffrey,* 2000 WL 1281174 (N.D. Cal. 2000), the court observed that (i) the CSA authorizes the Attorney General to revoke the DEA registration of a physician who engages in ''[s]uch other conduct which may threaten the public health and safety'' and (ii) because marijuana is a ''prohibited substance,'' ''recommending'' it to a patient ''might arguably fall within such 'other conduct.' '' Despite reaching this conclusion, and without declaring the CSA unconstitutional, the *Conant* court ruled that to enforce the CSA's revocation provisions with respect to a California physician who recommends marijuana based on a ''sincere medical judgment'' would violate the First Amendment because a doctor who engages in such conduct is engaging in a form of free speech. Therefore, the *Conant* court issued an injunction that (i) prohibits DEA from revoking the DEA registration of any California physician ''merely because the doctor recommends medical marijuana to a patient based on a ''sincere medical judgment'' and (ii) prohibits DEA ''from initiating any investigation solely on that ground.''

On October 29, 2002, the United States Court of Appeals for the Ninth Circuit affirmed the *Conant* injunction. The Department of Justice is currently reviewing the case to determine whether to petition the Supreme Court for certiorari. DEA has abided by the injunction since its inception and will continue to do so for as long as it remains in effect. Accordingly, the Deputy Administrator's determination regarding the continued registration of Dr. Fry is being made in compliance with the dictates of *Conant,* as explained in detail in this Final Order.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for renewal of such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

The continued registration of Dr. Fry is inconsistent with the public interest and the activity that she seeks to engage in under that registration is fundamentally incompatible with the CSA. The Deputy Administrator finds that Dr. Fry allowed her husband to provide client consultations related to the medical use of marijuana. These client ''consultations'' were oftentimes of short duration and consisted of legal advice and not that of a medical nature. These clients, who dealt primarily with Mr. Schafer, were advised on the proper conduct during arrests and/or how to avoid law enforcement entanglements. In addition, clients of Dr. Fry routinely received marijuana recommendation certificates despite the lack of a medical examination or a review of medical records. This practice was corroborated by an undercover visit to Dr. Fry's medical office by a law enforcement agent, where the agent received a written recommendation for marijuana from Dr. Fry's physician assistant despite receiving only a cursory examination and without medical records.

Moreover, Mr. Schafer engaged in the sale of marijuana and requested that others sell the drug for him. Mr. Schafer also exchanged with an individual, marijuana plants for drug paraphernalia. Without evidence to the contrary, the Deputy Administrator is led to the conclusion that such sales were motivated by profit. This conclusion is supported in part by Dr. Fry's admission to an undercover agent that she and her husband were in the business of selling marijuana growing kits and her complaint regarding the non-profitability of that business. Finally, Dr. Fry and Mr. Schafer possessed marijuana and drug paraphernalia at their residential location, and not at Dr. Fry's office where patients purportedly received medical treatment.

The conduct of Dr. Fry and Mr. Schafer bears no resemblance to a legitimate medical practice. Rather, it is more suggestive of persons obtaining marijuana for personal use (as evidenced by marijuana and drug paraphernalia found during the search warrant of the Greenwood residence) and engaging in the sale of dangerous drugs based upon monetary considerations. Such conduct is descriptive of unlawful distribution of a Schedule I controlled substance, in violation of 21 U.S.C. 841(a) and conspiracy to commit such offense in violation of 21 U.S.C. 846. DEA has previously found that similar criminal conduct provided a basis for revocation of a DEA Certificate of Registration and denial of an application for such registration under subsections (2), (4), and (5) of section 823(f). *See, e.g., Eugene Tapia, M.d.,* FR 26, 837 (1991); *Geoffrey A.W. DiBella* 52 FR 5844 (1987). Such conduct is particularly egregious where the registrant is trafficking in illicit (Schedule I) controlled substances. Here, the volume of marijuana trafficking and related criminal conduct is staggering for an individual entrusted with a DEA registration.

In addition, on several occasions when they had no marijuana to sell, Dr. Fry and Mr. Schafer referred patients to other marijuana dealers, and the couple sold marijuana-growing equipment to patients. These acts constitute aiding and abetting the illegal manufacture and distribution of controlled substances. 18 U.S.C. 2. At this time, Dr. Fry has not been indicted for conduct relative to her handling of marijuana. Nevertheless, it bears mentioning that the CSA provides that the revocation of a DEA Certificate of Registration is independent of, and not in lieu of, criminal prosecutions. 21 U.S.C. 824(c).

Although Dr. Fry provided her clients with marijuana recommendations on many occasions, the revocation of Dr. Fry's revocation announced here complies fully with the *Conant* injunction. The Deputy Administrator arrives at this conclusion based on the following: (i) DEA is not revoking Dr. Fry's registration ''merely because'' she recommended marijuana to a patient ''based on a sincere medical judgment''; and (ii) DEA did not initiate the investigation of Dr. Fry ''solely on that ground.'' As supported by the above findings, the Deputy Administrator's action in this regard is based primarily on the facts that Dr. Fry distributed marijuana and marijuana growing equipment directly to patients, aided and abetted the distribution of marijuana (by referring patients to marijuana dealers), and engaged in a conspiracy to commit these felony offenses.

Furthermore, there remain questions as to whether Dr. Fry's

recommendations were ''based on a sincere medical judgment.'' As alluded to above, the evidence suggests that Dr. Fry and her husband gave out recommendations solely as a moneymaking venture without conducting anything resembling a medical evaluation of the clients. Because Dr. Fry's recommendations were not ''based on a sincere medical judgment,'' the *Conant* injunction does not prohibit the investigation of Dr. Fry ''solely on that ground.''

Even if Dr. Fry's recommendations were ''sincere,'' DEA did not initiate its investigation of her ''solely on that ground.'' Rather, the investigation was initiated because Dr. Fry and Mr. Schafer distributed marijuana through a commercial shipping company. When the shipping company discovered that the packages contained marijuana, it informed DEA. During the course of the investigation, DEA agents learned that the return address labels on the marijuana packages contained an address associated with Dr. Fry and Mr. Schafer.

Dr. Fry did not respond to the Order to Show Cause and consequently did not refute the Government's assertions or information contained within the investigative file. As a result, her DEA registration must be revoked. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of registration BM4859178, issued to Marion ''Molly'' Fry, M.D. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective January 21, 2003.

Dated: December 13, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–32008 Filed 12–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–6]

Houba, Inc., Culver, IN; Notice of Administrative Hearing, Summary of Comments and Objections; Notice of Hearing

This Notice of Administrative Hearing, Summary of Comments and Objections, regarding the application of Houba, Inc. (Houba), for registration as an importer of the Schedule II controlled substances raw opium, opium poppy, and poppy straw concentrate is published pursuant to 21 CFR 1301.34(a). On September 6, 2001, notice was published in the **Federal Register**, 66 FR 46653 (DEA 2001), stating that Houba has applied to be registered as an importer of raw opium, opium poppy, and poppy straw concentrate.

By filings dated October 9, 2001, Penick Corporation (Penick), Noramco of Delaware, Inc. (Noramco), and Mallinckrodt, Inc. (Mallinckrodt), filed comments and request for hearing on Houba's application. Notice is hereby given that a hearing with respect to Houba's application to be registered as an importer of raw opium, opium poppy, and poppy straw concentrate will be conducted pursuant to the provisions of 21 U.S.C. 952(a) and 958 and 21 CFR 1301.34.

Hearing Date

The hearing will begin at 9:30 a.m. on February 3, 2003, and will be held at the Drug Enforcement Administration Headquarters, 600 Army Navy Drive, Hearing Room, Room E–2103, Arlington, Virginia. The hearing will be closed to any person not involved in the preparation or presentation of the case.

Notice of Appearance

Any person entitled to participate in this hearing pursuant to 21 CFR 1301.34, and desiring to do so, may participate by filing a notice of intention to participate, in triplicate, and in accordance with 21 CFR 1301.34, with the Hearing Clerk, Office of Administrative Law Judges, Drug Enforcement Administration, Washington, DC 20537, within 30 days of the date of publication of this notice in the **Federal Register**. Each notice of appearance must be in the form prescribed in 21 CFR 1316.48. Houba, Penick, Noramco, Mallinckrodt, and the Drug Enforcement Administration (DEA) Office of Chief Counsel need not file a notice of intention to participate.

FOR FURTHER INFORMATION CONTACT: Helen D. Farmer, Hearing Clerk, Drug Enforcement Administration, Office of Administrative Law Judges, Washington, DC 20537; Telephone (202) 307–8188.

Summary of Comments and Objections

Noramco's Comments

Noramco asserts that Houba bears the burden of providing that its registration to import would be consistent with the public interest, that Houba has apparently not engaged in the import or bulk manufacture of narcotic raw materials or controlled substances since withdrawing a previous application to manufacture the Schedule II controlled substance methylphenidate in 1994, and that existing manufacturers of bulk narcotic substances are producing an adequate and uninterrupted supply under adequately competitive conditions. Noramco further asserts that Houba's parent corporation, Halsey Pharmaceutical (Halsey), has previously failed to comply with DEA regulations and pled guilty in 1993 to drug manufacturing-related crimes, that five former Halsey employees were indicted as a result, and that a controlled substance-related murder occurred at Halsey's premises in 1992. Noramco also asserts that that there is significant evidence that Halsey has serious financial problems and does not likely have the financial resources to import and process narcotic raw materials. Finally, Noramco asserts that as of the date of its request for hearing, Mallinckrodt and Noramco were registered by DEA to import narcotic raw materials and applications by Penick, Chattem Chemicals, Inc. (Chattem), and Johnson Matthey, Inc. (Johnson Matthey), were pending, and that DEA is statutorily constrained to limit the number of approved importers and manufacturers to a number that can produce an adequate and uninterrupted supply of controlled substances for legitimate medical, scientific, research, and industrial purposes under adequately competitive conditions.

Penick's Comments

Penick states that based on information in the public record, it appears that Houba may not be able to establish that its registration to import narcotic raw materials would be in the public interest, that in light of the applications for registration to import that were pending at the time Penick filed its comments a determination of the adequacy of competition among importers could not be made; that although it is not possible to determine Houba's capabilities to process narcotic raw materials in its manufacturing facilities, it appears that Houba has never been registered to manufacture a product produced from these substances; and that Penick is not aware whether Houba has ever held DEA registration as a researcher that would allow it to develop methods and procedures for processing narcotic raw materials. Penick further asserts that additional information is necessary about Houba's experience in processing narcotic raw materials and

manufacturing opiate active pharmaceutical ingredients; about Houba's knowledge of and experience with the international marketplace, customs and practices associated with purchases of narcotic raw materials, and control of possible diversion of those materials; and about whether Houba's manufacturing facility complies with DEA's security requirements, including those pertaining to the transport of narcotic raw materials from their port of entry in the United States to Houba's facility. Finally, Penick asserts that Halsey has suffered serious financial difficulties and may be seeking an importer registration in order to attract potential investors and funding, and that Halsey has encountered various regulatory problems.

Mallinckrodt's Comments

Mallinckrodt asserts that Houba bears but cannot meet the burden of providing that its application satisfies applicable legal standards; that DEA, pursuant to its ''eighty-twenty rule'' (21 CFR 1312.13(f), requires importers of narcotic raw material to purchase eighty percent of these substances from India and/or Turkey and the remaining twenty percent from Yugoslavia, France, Poland, Hungary, and/or Australia, which provides insurmountable cost advantages to foreign producers; that in order to demonstrate that its application is in the public interest, Houba must demonstrate not only that it has adequate physical security at its facility, but also that it has a proven technology for processing narcotic raw materials that meets federal regulatory requirements, a detailed marketing and business plan, plans and firm capital commitments for construction of the facility in which it will process narcotic raw materials, and personnel with experience and expertise to implement the proven technology with minimal wastage of narcotic raw materials. Mallinckrodt further asserts that DEA is required to limit the number of importers and that the existing registrants provide an adequate supply under adequately competitive conditions. In addition, Mallinckrodt asserts that Houba should be required to demonstrate that, if registered, it would produce opiates from both opium and poppy straw concentrate, because failing to do so would violate DEA's ''eighty-twenty-rule'' and DEA's policy against permitting manufacturers to hold registrations and no use them, and because failing to do so would increase the instability of supply of narcotic raw materials. Finally, Mallinckrodt asserts that Halsey admits that it is in a precarious financial position, that Halsey is in a position to control Houba's management and operations, and that Halsey had a poor history of compliance with regulatory requirements throughout the 1990s; that it is uncertain whether Houba has the technical capability to process opium and poppy straw concentrate; and that Mallinckrodt has no knowledge that Houba has any experience in importing or extracting narcotic raw materials.

Dated: December 13, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–32007 Filed 12–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 30, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 30, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of December, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 11/25/2002 and 11/29/2002]

TA–W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
50,174	Burgess Norton Foundry (Comp)	Muskegon, MI	11/25/2002	11/09/2002
50,175	T.L. Diamond and Company, Inc. (Comp)	New York, NY	11/25/2002	11/22/2002
50,176	Idaho Circuit Technology Corp. (Comp)	Glenns Ferry, ID	11/25/2002	11/22/2002
50,177	Carptenter Technology Corp. (Wkrs)	McBee, SC	11/25/2002	11/22/2002
50,178	Evanite Fiber Corporation (Comp)	Corvallis, OR	11/25/2002	11/22/2002
50,179	SMT, Inc. (UAW)	Hanover, MI	11/25/2002	11/18/2002
50,180	Dallco Industries, Inc. (Comp)	York, PA	11/25/2002	11/22/2002
50,181	Eagle Zinc Company (Comp)	Hillsboro, IL	11/25/2002	11/22/2002
50,182	TSCO/Tube Specialties Co., Inc. (Wkrs)	Troutdale, OR	11/26/2002	11/20/2002
50,183	Donaldson Company, Inc. (Comp)	Port Huron, MI	11/26/2002	11/19/2002
50,184	Corning Cable Systems (Wkrs)	Hickory, NC	11/26/2002	11/13/2002
50,185	Smurfit-Stond (PACE)	Milwaukee, WI	11/26/2002	11/22/2002
50,186	Don Shapiro Industries (Comp)	El Paso, TX	11/26/2002	11/06/2002
50,187	Crown Casting, Inc. (NJ)	Midland Park, NJ	11/26/2002	11/19/2002

APPENDIX—Continued

[Petitions instituted between 11/25/2002 and 11/29/2002]

TA–W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
50,188	JDS Uniphase (NJ)	West Trenton, NJ	11/26/2002	11/14/2002
50,189	Temco Fireplace Products (Wkrs)	Manchester, TN	11/26/2002	11/21/2002
50,190	Powdertech Corp. (Comp)	Valparaiso, IN	11/26/2002	11/20/2002
50,191	Alfred Dunner, Inc. (NJ)	Parsippany, NJ	11/26/2002	11/14/2002
50,192	Smith and Wesson Corp. (Comp)	Springfield, MA	11/26/2002	11/22/2002
50,193	Dan River, Inc. (Wkrs)	Greenville, SC	11/26/2002	11/06/2002
50,194	Allen-Edmonds Shoe Corp. (Wkrs)	Lewiston, ME	11/26/2002	11/18/2002
50,195	ZSML Corp. (Comp)	San Fernando, CA	11/26/2002	11/14/2002
50,196	Rockford Company (The) (Comp)	Rockford, IL	11/26/2002	11/26/2002
50,197	Williamsport Wirerope Works (USWA)	Williamsport, PA	11/27/2002	11/22/2002
50,198	Vaagen Brothers Lumber, Inc. (Comp)	Republic, WA	11/27/2002	11/25/2002
50,199	J Dreier Enterprises LTD (Comp)	New Brighton, MN	11/27/2002	11/19/2002
50,200	Wabash Alloys LLC (Comp)	Benton, AR	11/27/2002	11/25/2002
50,201	Aerostar International, Inc. (Wkrs)	Parkston, SD	11/27/2002	11/19/2002
50,202	General Electric Company (USWA)	Bridgeville, PA	11/27/2002	11/19/2002
50,203	SMS Eumuco, Inc. (Comp)	Pittsburgh, PA	11/27/2002	11/21/2002
50,204	Kokusai Semiconductor Equipment Corp. (Co	N. Billerica, MA	11/27/2002	11/16/2002
50,205	McInnes Rolled Rings (Wkrs)	Erie, PA	11/27/2002	11/26/2002
50,206	Inland production Company (Wkrs)	Myton, UT	11/27/2002	11/25/2002
50,207	Dana Corporation (Wkrs)	Morganton, NC	11/27/2002	11/19/2002
50,208	Marshall Erdman Techline (UBCJA	Waunakee, WI	11/27/2002	11/26/2002
50,209	Facemate Corp. (Wkrs)	Greenwood, SC	11/27/2002	11/18/2002
50,210	Convereys (Wkrs)	Jacksonville, FL	11/27/2002	11/11/2002
50,211	Trigon Engineering (AR)	Lt. Rock, AR	11/27/2002	11/27/2002
50,212	Lakeside Machine, Inc. (IBT)	Gladstone, MI	11/27/2002	11/27/2002
50,213	Fishercast, Inc. (Comp)	Watertown, NY	11/27/2002	11/20/2002
50,214	Arvin/Meritor Automotive (UAW)	Oshkosh, WI	11/29/2002	11/27/2002
50,215	Greystone, Inc. (Comp)	Providence, RI	11/29/2002	11/26/2002
50,216	Carney Products Company, LTD (Comp)	Saint Maries, ID	11/29/2002	11/13/2002
50,217	Emerald Creek Garnet (Comp)	Fernwood, ID	11/29/2002	11/27/2002
50,218	United Sewing (Comp)	Etowah, TN	11/29/2002	11/27/2002
50,219	Maytag NLP (UAW)	Newton, IA	11/29/2002	11/27/2002
50,220	Trus Joist, A Weyerhaeuser Business (Wkrs)	Stayton, OR	11/29/2002	11/26/2002
50,221	Ericsson Wireless Communications (Comp)	San Diego, CA	11/29/2002	11/21/2002
50,222	Great Northern Tool and Die, Inc. (Comp)	Chesterfield, MI	11/29/2002	11/22/2002

[FR Doc. 02–32097 Filed 12–19–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of labor under Section 221(a) of the trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other person showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 30, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 30, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 29the day of November, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 11/18/2002 and 11/22/2002]

TA–W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
50,107	Optek Technology, Inc. (Wkrs)	Carrollton, TX	11/18/2002	11/15/2002

APPENDIX—Continued

[Petitions instituted between 11/18/2002 and 11/22/2002]

TA–W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
50,108A	Ericsson, Inc. (Comp)	Richardson, TX	11/18/2002	11/15/2002
50,108	Ericsson, Inc. (Comp)	Plano, TX	11/18/2002	11/15/2002
50,109	Creative Mold Co., LLC (Comp)	Auburn, ME	11/18/2002	11/15/2002
50,110	Emerson Motor Company (Comp)	Sturgeon Bay, WI	11/18/2002	11/12/2002
50,111	Osram Sylvania Products, Inc. (Comp)	Bangor, ME	11/18/2002	11/15/2002
50,112	California Manufacturing Co. (Comp)	Pelahatchie, MS	11/18/2002	11/05/2002
50,113	Fleming Lumber Co. (Comp)	Milligan, FL	11/18/2002	11/18/2002
50,114	Cadmus Mack (Wkrs)	E. Stroudsburg, PA	11/18/2002	11/18/2002
50,115	Intel Corp. (Wkrs)	Chandler, AZ	11/18/2002	11/11/2002
50,116	J-Star Bodco, Inc. (Comp)	Ft. Atkinson, WI	11/18/2002	11/16/2002
50,117	Flextronics International (Wkrs)	Longmont, CO	11/19/2002	11/12/2002
50,118	Volex, Inc. (Comp)	Clinton, AR	11/19/2002	11/07/2002
50,119	U.S. Repeating Arms Company (Comp)	New Haven, CT	11/19/2002	11/08/2002
50,120	TIMET (USWA)	Henderson, NV	11/19/2002	11/12/2002
50,121	VMV Enterprises, Inc. (IAMAW)	Paducah, KY	11/19/2002	11/18/2002
50,122	FCI USA, Inc. (Wkrs)	Etters, PA	11/19/2002	11/14/2002
50,123	Garden State Tanning, Inc. (UNITE)	Fleetwood, PA	11/19/2002	11/04/2002
50,124	Thomson Multimedia, Inc. (Wkrs)	Lancaster, PA	11/19/2002	11/08/2002
50,125	Ovalstrapping, Inc. (Wkrs)	Hoquiam, WA	11/19/2002	11/13/2002
50,126	Johnson Controls, Inc. (UAW)	Fullerton, CA	11/19/2002	11/13/2002
50,127	Orgreen Corp. (Wkrs)	Bend, OR	11/19/2002	11/15/2002
50,128	GE Gas Turbines (Wkrs)	Greenville, SC	11/19/2002	11/15/2002
50,129	IBM (Wkrs)	Piscataway, NJ	11/19/2002	11/13/2002
50,130	Lakeview Forge Company (USWA)	Erie, PA	11/19/2002	11/18/2002
50,131	Lear Corporation (UNITE)	Carlisle, PA	11/19/2002	11/11/2002
50,132	Ceramic Cooling Technologies (Comp)	Fort Worth, TX	11/19/2002	11/07/2002
50,133	Phelps Dodge Wire and Cable (Wkrs)	W. Caldwell, NJ	11/19/2002	11/14/2002
50,134	Zierick Manufacturing Corp. (Wkrs)	Yatesboro, PA	11/19/2002	11/14/2002
50,135	Punch Components (Wkrs)	Lima, OH	11/19/2002	11/12/2002
50,136	Bissell Homecare, Inc. (Comp)	Walker, MI	11/19/2002	11/11/2002
50,137	SL Outer Banks, LLC (Comp)	Lumberton, NC	11/19/2002	11/18/2002
50,138	BBA Nonwovens (AWPPW)	Washougal, WA	11/20/2002	11/19/2002
50,139	Lau Industries (Wkrs)	Fridley, MN	11/20/2002	11/15/2002
50,140	Basler Electric Company (Comp)	Corning, AR	11/20/2002	11/18/2002
50,141	Tecumseh (IAM)	New Holstein, WI	11/20/2002	11/19/2002
50,142	Midas International Corporation (PACE)	Hartford, WI	11/20/2002	11/19/2002
50,143	True North Enterprises (Wkrs)	La Feria, TX	11/20/2002	11/19/2002
50,144	Saint-Gobain Abrasives (Comp)	Flowery Branch, GA	11/20/2002	11/12/2002
50,145	Ardco Holdings, Inc. (Comp)	Scottsboro, AL	11/20/2002	11/19/2002
50,146	Tetra Tool Company (Wkrs)	Erie, PA	11/20/2002	11/12/2002
50,147	Sanmina-SCI Corporation (Comp)	Word Hill, MA	11/20/2002	11/14/2002
50,148	Newark Atlantic Paper Board (PACE)	Lawrence, MA	11/20/2002	11/18/2002
50,149	New Roan Corp. (Comp)	Hialeah, FL	11/21/2002	11/05/2002
50,150	Thomasville Furniture Industries, Inc. (Comp)	Thomasville, NC	11/21/2002	11/20/2002
50,151	Sig Doboy (Wkrs)	New Richmond, WI	11/21/2002	11/20/2002
50,152	Kennecott Rawhide Mining Company (Comp)	Fallon, NV	11/21/2002	11/20/2002
50,153	Triangle Apparel, Inc. (Comp)	Parsons, TN	11/21/2002	11/20/2002
50,154	Aurafin OroAmerica (Wkrs)	Burbank, CA	11/21/2002	11/12/2002
50,155	PCC Airfoils (Wkrs)	Douglas, GA	11/21/2002	11/18/2002
50,156	ITT Industries—Jabsco (UAW)	Costa Mesa, CA	11/21/2002	11/19/2002
50,157	Durango-Georgia Paper Col (Comp)	St. Marys, GA	11/21/2002	11/14/2002
50,158	Alcatel USA (Wkrs)	Plano, TX	11/21/2002	11/19/2002
50,159	Pliant Solutions (Wkrs)	Ft. Edward, NY	11/21/2002	11/13/2002
50,160	Edward Vogt Valve Company (Wkrs)	Jeffersonville, IN	11/21/2002	11/18/2002
50,161	Magruder Color Company, Inc. (Comp)	Elizabeth, NJ	11/21/2002	11/06/2002
50,162	Magnivision (Wkrs)	Miramar, FL	11/21/2002	11/14/2002
50,163	Seadrift Coke, L.P. (Comp)	Port Lavaca, TX	11/22/2002	11/21/2002
50,164	Sunbeam Products Inc. (Comp)	Neosho, MO	11/22/2002	11/08/2002
50,165	Weyerhaeuser Company (Comp)	Johnsonburg, PA	11/22/2002	11/15/2002
50,166	L. Chessler, Inc. (UNITE)	Philadelphia, PA	11/22/2002	11/21/2002
50,167	Bike Athletic Company (UNITE)	Knoxville, TN	11/22/2002	11/21/2002
50,168	Square D Company (Comp)	Knightdale, NC	11/22/2002	11/20/2002
50,169	Solectron Corporation (Comp)	Fremont, CA	11/22/2002	11/21/2002
50,170	Erasteel, Inc. (Wkrs)	McKeesport, PA	11/22/2002	11/15/2002
50,171	JK Tool and Die, Inc. (Comp)	Apollo, PA	11/22/2002	11/22/2002
50,172	Applied Films Corp. (Wkrs)	Longmont, CO	11/22/2002	11/19/2002
50,173	Twyford Int'l, Inc. (Comp)	Sebring, FL	11/22/2002	11/15/2002

[FR Doc. 02–32098 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998: Proposed Collection: Notice of Intent To Reinstate the Unified State Planning Guidance; Correction

AGENCY: Employment and Training Administration, USDOL.

ACTION: Correction.

SUMMARY: In notice document 02–31560 beginning on page 76758 in the issue of Friday, December 13, 2002, make the following correction: In the first column, following the category for **SUMMARY**, please insert the following text:

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before February 18, 2003.

ADDRESSES: Maria Flynn, Office of One-Stop Operations/ATTN: Dolores Hall-Beran, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210: (202) 693–3045 (phone) (this is not a toll-free number); (202) 693–3015 (fax); or e-mail: *dberan@doleta.gov.*

Signed at Washington, DC this 16th day of December, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. 02–32096 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6707]

State of Alaska Commercial Fisheries Entry Commission Permit # 60008B, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 60008B, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32100 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6708]

State of Alaska Commercial Fisheries Entry Commission Permit # 57190O, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 57190O, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32101 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6710]

State of Alaska Commercial Fisheries Entry Commission Permit #57738S, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57738S, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32102 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

NAFTA–6711

State of Alaska Commercial Fisheries Entry Commission Permit #66298R, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 66298R, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32103 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6761]

State of Alaska Commercial Fisheries Entry Commission Permit # 67323E, Goodnews Bay, AL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 67323E, Goodnews Bay, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32104 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6762]

State of Alaska Commercial Fisheries Entry Commission Permit # 58886G, Igiugig, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 58886G, Igiugig, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32105 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6763]

State of Alaska Commercial Fisheries Entry Commission Permit #55961K, Igiugig, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 55961K, Igiugig, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32106 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6764]

State of Alaska Commercial Fisheries Entry Commission Permit #57815F, Igiugig, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57815F, Igiugig, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32107 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6765]

State of Alaska Commercial Fisheries Entry Commission Permit # 64881C, Igiugig, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 64881C, Igiugig, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32108 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6766]

State of Alaska Commercial Fisheries Entry Commission Permit # 67340W, Igiugig, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 67340W, Igiugig, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32109 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6767]

State of Alaska Commercial Fisheries Entry Commission Permit #65113P, Iliamna, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65113P, Iliamna, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32110 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6769]

State of Alaska Commercial Fisheries Entry Commission Permit #59760V, Iliamna, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59760V, Iliamna, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32111 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6776]

State of Alaska Commercial Fisheries Entry Commission Permit #58538A, Iliamna, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58538A, Iliamna, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32112 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6770]

State of Alaska Commercial Fisheries Entry Commission Permit # 65910I, Iliamna, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 65910I, Iliamna, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32113 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6772]

State of Alaska Commercial Fisheries Entry Commission Permit # 61725F, Iliamna, AL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 61725F, Iliamna, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32114 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6773]

State of Alaska Commercial Fisheries Entry Commission Permit # 61725F, Iiamna, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 61725F, Iliamna, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32115 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6774]

State of Alaska Commercial Fisheries Entry Commission Permit # 61512M, Iliamna, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 61512M, Iliamna, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32116 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6777]

State of Alaska Commercial Fisheries Entry Commission Permit # 61946K, Iliamna, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 61946K, Iliamna, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32117 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6778]

State of Alaska Commercial Fisheries Entry Commission Permit # 56840M; Iliamna, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 56840M, Iliamna, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32118 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6779]

State of Alaska Commercial Fisheries Entry Commission Permit # 56614V King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 56614V, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–32119 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Request for Earnings Information (LS–426). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 18, 2003.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, Email *pforkel@fenix2.dol–esa.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel. Pursuant to the LHWCA, injured employees shall receive compensation in an amount equal to 66⅔ per centum of their average weekly wage. Forms LS–426 is used to verify the average weekly wage of an injured employee to determine if the correct compensation rate is being paid. This information collection is currently approved for use through June 30, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to assure payment of compensation benefits to injured workers at the proper rate. There is no change in the substance or method of collection since the last OMB approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Request for Earnings Information.

OMB Number: 1215–0112.

Agency Number: LS–426.

Affected Public: Individuals or households.

Total Respondents/Responses: 1,600.

Frequency: On occasion.

Average Burden per Response: 15 minutes.

Estimated Total Burden Hours: 400.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $640. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 16, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–32099 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions list to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maine
- ME020002 (Mar. 1, 2002)
- ME020005 (Mar. 1, 2002)
- ME020007 (Mar. 1, 2002)
- ME020007 (Mar. 1, 2002)
- ME020009 (Mar. 1, 2002)
- ME020010 (Mar. 1, 2002)

Volume II

Delaware
- DE020002 (Mar. 1, 2002)

Volume III

Florida
- FL020017 (Mar. 1, 2002)
- FL020032 (Mar. 1, 2002)

Volume IV

Michigan
- MI020001 (Mar. 1, 2002)
- MI020002 (Mar. 1, 2002)
- MI020003 (Mar. 1, 2002)
- MI020004 (Mar. 1, 2002)
- MI020005 (Mar. 1, 2002)
- MI020007 (Mar. 1, 2002)
- MI020008 (Mar. 1, 2002)
- MI020010 (Mar. 1, 2002)
- MI020011 (Mar. 1, 2002)
- MI020012 (Mar. 1, 2002)
- MI020013 (Mar. 1, 2002)
- MI020015 (Mar. 1, 2002)
- MI020016 (Mar. 1, 2002)
- MI020017 (Mar. 1, 2002)
- MI020019 (Mar. 1, 2002)
- MI020020 (Mar. 1, 2002)
- MI020021 (Mar. 1, 2002)
- MI020023 (Mar. 1, 2002)
- MI020027 (Mar. 1, 2002)
- MI020030 (Mar. 1, 2002)
- MI020031 (Mar. 1, 2002)
- MI020035 (Mar. 1, 2002)
- MI020036 (Mar. 1, 2002)
- MI020046 (Mar. 1, 2002)
- MI020047 (Mar. 1, 2002)
- MI020050 (Mar. 1, 2002)
- MI020060 (Mar. 1, 2002)
- MI020062 (Mar. 1, 2002)
- MI020063 (Mar. 1, 2002)
- MI020064 (Mar. 1, 2002)
- MI020066 (Mar. 1, 2002)
- MI020067 (Mar. 1, 2002)
- MI020068 (Mar. 1, 2002)
- MI020069 (Mar. 1, 2002)
- MI020070 (Mar. 1, 2002)
- MI020071 (Mar. 1, 2002)
- MI020072 (Mar. 1, 2002)
- MI020073 (Mar. 1, 2002)
- MI020074 (Mar. 1, 2002)
- MI020075 (Mar. 1, 2002)
- MI020076 (Mar. 1, 2002)
- MI020077 (Mar. 1, 2002)
- MI020078 (Mar. 1, 2002)
- MI020079 (Mar. 1, 2002)
- MI020080 (Mar. 1, 2002)
- MI020081 (Mar. 1, 2002)
- MI020082 (Mar. 1, 2002)
- MI020083 (Mar. 1, 2002)
- MI020084 (Mar. 1, 2002)
- MI020085 (Mar. 1, 2002)
- MI020087 (Mar. 1, 2002)
- MI020089 (Mar. 1, 2002)
- MI020090 (Mar. 1, 2002)
- MI020091 (Mar. 1, 2002)
- MI020092 (Mar. 1, 2002)
- MI020093 (Mar. 1, 2002)
- MI020094 (Mar. 1, 2002)
- MI020095 (Mar. 1, 2002)
- MI020096 (Mar. 1, 2002)
- MI020097 (Mar. 1, 2002)
- MI020105 (Mar. 1, 2002)

Wisconsin
- WI020003 (Mar. 1, 2002)
- WI020004 (Mar. 1, 2002)
- WI020005 (Mar. 1, 2002)
- WI020006 (Mar. 1, 2002)
- WI020008 (Mar. 1, 2002)
- WI020009 (Mar. 1, 2002)
- WI020010 (Mar. 1, 2002)
- WI020011 (Mar. 1, 2002)
- WI020013 (Mar. 1, 2002)
- WI020016 (Mar. 1, 2002)
- WI020017 (Mar. 1, 2002)
- WI020019 (Mar. 1, 2002)
- WI020020 (Mar. 1, 2002)
- WI020025 (Mar. 1, 2002)
- WI020030 (Mar. 1, 2002)
- WI020046 (Mar. 1, 2002)
- WI020047 (Mar. 1, 2002)

Volume V

Iowa

IA020001 (Mar. 1, 2002)
IA020002 (Mar. 1, 2002)
IA020003 (Mar. 1, 2002)
IA020004 (Mar. 1, 2002)
IA020005 (Mar. 1, 2002)
IA020006 (Mar. 1, 2002)
IA020008 (Mar. 1, 2002)
IA020010 (Mar. 1, 2002)
IA020012 (Mar. 1, 2002)
IA020013 (Mar. 1, 2002)
IA020014 (Mar. 1, 2002)
IA020016 (Mar. 1, 2002)
IA020017 (Mar. 1, 2002)
IA020024 (Mar. 1, 2002)
IA020025 (Mar. 1, 2002)
IA020028 (Mar. 1, 2002)
IA020029 (Mar. 1, 2002)
IA020031 (Mar. 1, 2002)
IA020054 (Mar. 1, 2002)
IA020056 (Mar. 1, 2002)
IA020059 (Mar. 1, 2002)
IA020060 (Mar. 1, 2002)

Kansas
KS020007 (Mar. 1, 2002)
KS020013 (Mar. 1, 2002)
KS020018 (Mar. 1, 2002)
KS020019 (Mar. 1, 2002)
KS020020 (Mar. 1, 2002)
KS020021 (Mar. 1, 2002)
KS020023 (Mar. 1, 2002)
KS020026 (Mar. 1, 2002)

Missouri
MO020001 (Mar. 1, 2002)
MO020003 (Mar. 1, 2002)
MO020010 (Mar. 1, 2002)
MO020013 (Mar. 1, 2002)
MO020016 (Mar. 1, 2002)
MO020041 (Mar. 1, 2002)
MO020042 (Mar. 1, 2002)
MO020043 (Mar. 1, 2002)
MO020046 (Mar. 1, 2002)
MO020047 (Mar. 1, 2002)
MO020051 (Mar. 1, 2002)
MO020053 (Mar. 1, 2002)
MO020054 (Mar. 1, 2002)
MO020055 (Mar. 1, 2002)
MO020056 (Mar. 1, 2002)
MO020057 (Mar. 1, 2002)
MO020058 (Mar. 1, 2002)
MO020059 (Mar. 1, 2002)

Nebraska
NE020021 (Mar. 1, 2002)

Volume VI

Alaska
AK020001 (Mar. 1, 2002)
AK020002 (Mar. 1, 2002)
AK020003 (Mar. 1, 2002)
AK020006 (Mar. 1, 2002)
AK020008 (Mar. 1, 2002)

Colorado
CO020015 (Mar. 1, 2002)

South Dakota
SD020005 (Mar. 1, 2002)
SD020009 (Mar. 1, 2002)

Volume VII

Nevada
NV020003 (Mar. 1, 2002)
NV020004 (Mar. 1, 2002)
NV020005 (Mar. 1, 2002)
NV020009 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and Related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov) of* the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 12th day of December 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–31785 Filed 12–19–02; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–2259]

Final Finding of No Significant Impact for the Proposed Use of Alternate Concentration Limits for Ground Water at Pathfinder Mines Corporation's Lucky MC Site, Gas Hills Region of Wyoming

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment of NRC Source Material License SUA–672 to authorize the licensee, Pathfinder Mines Corporation (PMC) to apply Alternate Concentration Limits (ACLs) to licensed constituents of ground water at the Lucky Mc uranium mill tailings site in the Gas Hills region (south central) of Wyoming. PMC submitted, by letter dated December 21, 2000, a license amendment application requesting ALCs for six ground water constituents at their Lucky Mc site. Hills region of The NRC staff submitted a request for additional information by letter dated October 26, 2001, and PMC responded January 11, and November 4, 2002, with application page changes.

An Environmental Assessment (EA) was performed by the NRC staff in support of its review of PMC's license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

II. Supplementary Information

Background

The PMC Lucky Mc former uranium mill site (now a mill tailings site) is licensed by the U.S. Nuclear Regulatory Commission (NRC) under Source Materials License SUA–672 to possess byproduct material in the form of uranium processing waste, such as mill tailings, generated by past uranium processing operations. The PMC Lucky Mc site is located in the Gas Hills region of Freemont County, Wyoming, approximately 72 kilometers (45 miles) east of Riverton, Wyoming. The mill operated from 1958 to 1988 and has been dismantled and disposed of. The site contains three disposal areas (tailings impoundments) and three tailings solution ponds. The license establishes a ground water protection standard at one Point of Compliance (POC) well near the disposal area. This well is used to monitor water quality because hazardous constituents have leached from the milling waste into the upper aquifer.

The ACL application requests that site-specific concentration limits for six hazardous constituents in ground water be granted for the PMC site in place of the current concentration values in the license. The licensee has indicated that the concentration limits required to be met under the licensed corrective action program are not attainable due to the high cost and the influence of mining-impacted water. The ground water at the PMC site and surrounding areas is impacted by open-pit uranium mines

having the same constituents as those resulting from the tailings seepage.

PMC also is proposing that the site's Point of Exposure (POE) be established at the long-term care boundary. This boundary encompasses all the land that will be transferred to the U.S. Department of Energy (DOE) for perpetual care of the disposal site when the PMC license is terminated. The POE is the location nearest the site where the public or environment might be exposed to milling impacted ground water, even though such exposure is highly unlikely.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the application of ACLs, in accordance with 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions. The license amendment would authorize PMC to apply ACLs to the specified constituents as measured at the POC. The technical aspects of the ACL application are to be discussed separately in a Technical Evaluation Report (TER) that will accompany the agency's final licensing action.

The results of the staff's appraisal of potential environmental impacts are documented in an EA placed in the Publicly Available Records (PARS) component of NRC's document system (ADAMS). Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The proposed action is to amend NRC Source Material License SUA–672, to allow application of ACLs to licensed constituents in ground water at the PMC Lucky Mc site. The principal alternatives available to the NRC are to:

1. Approve the license amendment request as submitted; or

2. Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

3. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of PMC's plans necessary for license termination (site is in final stages of decommissioning) or the denial of the license amendment. Therefore, from an environmental impact standpoint, the staff would consider Alternative 1 to be the appropriate alternative for selection. Additionally, the staff has performed a safety review of the licensee's proposal with respect to the ground water criteria specified in 10 CFR 40, Appendix A, and is preparing a TER for this review.

Conclusions

The NRC staff has examined actual and potential impacts associated with implementation of the proposed ACLs, and has determined that the requested amendment of Source Material License SUA–672, authorizing the ACLs, will: (1) Be consistent with requirements of 10 CFR Part 40, Appendix A; (2) not be inimical to the public health and safety; and (3) not have long-term detrimental impacts on the environment. The following statements summarize the conclusions resulting from the staff's environmental assessment, and support the FONSI:

1. An acceptable long-term ground water monitoring program will monitor contaminants to detect if applicable regulatory limits are exceeded. Each of the licensed constituents should remain within the range of background values for 1000 years at the POE.

2. Present and potential health risks to the public and risks of environmental damage from the proposed application of ACLs were assessed. Given the remote location, the expected future land use, the perpetual control by the Federal government of land within the long-term boundary, and the high value of some of the constituents in background ground water due to past uranium mining in the area, the staff determined that the risk factors for health and environmental hazards due to the proposed licensing action are insignificant.

III. Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed amendment of NRC Source Material License SUA–672. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted. Accordingly, a Finding of No Significant Impact is appropriate.

IV. Other Information

The Environmental Assessment to this proposed action is available for inspection at NRC's Public Document Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Number: ML023470321). Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Elaine Brummett, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6606; Fax: (301) 415–5390.

For the U.S. Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 13th day of December, 2002.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–32079 Filed 12–19–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of the Final Supplement 1 to the Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, NUREG–0586

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published Final Supplement 1 to NUREG–0586, ''Generic Environmental Impact Statement (GEIS) on Decommissioning of Nuclear Facilities,'' regarding the decommissioning of nuclear power reactors.

Final Supplement 1 to the GEIS is available for public inspection in the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Michael T. Masnik, Senior Project Manager, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Dr. Masnik may be contacted at (301) 415–1191 or by writing to: Michael T. Masnik, U.S. Nuclear Regulatory

Commission, MS O–12D3, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 13th day of December, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–32080 Filed 12–19–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46992; File No. SR–OPRA–2002–01]

Options Price Reporting Authority; Notice of Filing and Order Approving for 120 Days an Amendment to the Options Price Reporting Authority Plan To Establish a Best Bid and Offer Market Data Service

December 13, 2002.

I. Introduction

On February 26, 2002, the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and rule 11Aa3–2 thereunder,[2] an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'' or ''Plan'').[3] The proposed amendment would add to the Plan terms governing the provision by OPRA of a best bid and offer (''BBO'') for each of the options series included in OPRA's market data service, and governing the use of the BBO by vendors. Notice of the proposal was published in the **Federal Register** on March 15, 2002.[4] The Commission received two comment letters on the proposed OPRA Plan amendment.[5] On May 30, 2002, OPRA submitted Amendment No. 1 to the proposal.[6] On June 13, 2002, OPRA submitted a letter in response to the comments.[7] On October 4, 2002, OPRA submitted Amendment No. 2 to the proposal.[8] This order approves the proposal as modified by Amendments No. 1 and 2 for 120 days, and solicits comment on Amendments No. 1 and 2.[9]

II. Description and Purpose of the Amendment

Under the proposed Plan amendment, OPRA proposes to add a consolidated BBO service that would disseminate the best bid and offer, subject to certain exceptions, for each options series.[10] The BBO for any series of options would be the highest priced bid and the lowest priced offer currently being quoted on any of OPRA's participant exchanges. Subject to the price and size increments discussed below, if the same best priced bid or offer is quoted on more than one exchange, the exchange that is quoting at that price for the largest number of options contracts would be identified by OPRA as the market that is quoting the best bid or offer. If the same best bid or offer for the same number of options contracts is quoted on more than one exchange, the exchange that was first in time to quote that bid or offer for that number of contracts would be identified as the BBO. Thus, OPRA would prioritize the BBO on the basis of price, size, and time.

The proposed BBO Guidelines provide that the minimum price increment for purposes of the BBO would be no less than five cents,[11] and that, absent a change in the price of the BBO, the minimum size increment for purposes of the BBO would be no fewer than ten contracts. In other words, to displace the current BBO by improving the price at which an options series is quoted, the price improvement must be at least five cents per contract and, to displace the current BBO by increasing the number of contracts covered by a quote at the same price as the current BBO, the new bid or offer must be for at least ten contracts more than the current BBO. This would not preclude markets from disseminating bids and offers that improve the current BBO by less than five cents (to the extent such quotes may be permitted under applicable exchange rules) or that increase the size at a given quotation by fewer than ten contracts. Such price or size improvements, however, would not be reflected in the BBO disseminated by OPRA. Thus, the BBO, as provided by OPRA, could include an approximation of the size associated with the best bid and offer actually available.[12]

Currently, vendors are required to include the best bid and offer from each market and last sale reports for any series included in the market data service they provide. Under the proposal, OPRA vendors would have the option to disseminate to customers the consolidated BBO together with last sale reports for any series of options. In addition to the BBO service, OPRA would be obligated to continue to offer to vendors its full market data service, which includes the disseminated best bid and offer from each of OPRA's participant exchanges. The proposed amendment also would permit OPRA to contract with vendors separately for: (i) The last sale reports and the BBO; (ii) or for the last sale reports, the BBO, and quotation information from each market. OPRA also could contract separately with vendors for the full market data service that it currently offers.

In a separate proposal, OPRA proposes changes to its vendor agreement which, if approved, would

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] OPRA is a National Market System Plan approved by the Commission pursuant to section 11A of the Act and rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc. is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[4] *See* Securities Exchange Act Release No. 45532 (March 11, 2002), 67 FR 11727 (''Notice'').

[5] *See* letters from Devin Wenig, President, Investment Banking and Brokerage, Reuters America Inc., dated April 19, 2002 (''Reuters Letter''), and George W. Mann, Jr., Executive Vice President and General Counsel, Boston Stock Exchange Inc., dated May 1, 2002 (''BSE Letter''), to Jonathan G. Katz, Secretary, Commission.

[6] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to John Roeser, Special Counsel, Division of Market Regulation (''Division''), Commission, dated May 29, 2002 (''Amendment No. 1''). In Amendment No. 1, OPRA proposes to complete the modifications to its system necessary to enable the system to provide the BBO service no later than March 31, 2003. In addition, OPRA proposes a technical correction to clarify that the Plan would still require the options exchanges to use the OPRA system as the exclusive means of disseminating options market information. Finally, OPRA proposes to provide examples under the BBO Guidelines to describe how OPRA would calculate the BBO.

[7] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to John Roeser, Special Counsel, Division, Commission, dated June 12, 2002 (''OPRA Letter'').

[8] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to John Roeser, Special Counsel, Division, Commission, dated October 2, 2002 (''Amendment No. 2''). In Amendment No. 2, OPRA proposes to eliminate the proposed ten contract minimum such that the disseminated BBO would include the actual size of the best bid and offer at the time each new price is disseminated.

[9] *See* Exchange Act rule 11Aa3–2(c)(4).

[10] OPRA represents that the BBO Service would be implemented no later than the end of the first quarter of 2003. This would be accomplished by providing dual feeds to vendors during a phase-in period, one with BBO information and one without it. *See* Amendment No. 1, *supra* note 6.

[11] The minimum price variation for option quotes under the rules of OPRA's participant exchanges is currently five cents for options trading under $3.00 per share per option contract. *See, e.g.*, Amex rule 952.

[12] *See* Amendment No. 1, *supra* note 6.

affect the manner in which vendors disseminate information to end users.[13] Specifically, under OPRA's vendor agreement proposal, vendors could choose to disseminate only the BBO and last sale information. Moreover, the proposal would permit vendors to exclude from the BBO the quotation size, or the market identifier associated with a BBO, or both, so long as in excluding this information the vendor would not discriminate on the basis of the market in which quotations are entered. In addition, if a vendor excludes the market identifier associated with the BBO, it would have to make that information available to recipients of the service through an inquiry service provided without additional cost. Further, the proposed vendor agreement would require any vendor that includes size in its BBO service to disclose to its customers that the included size is an approximation of the actual size, and that the actual size is available on OPRA's full quotation service.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 1 and 2 to the proposed Plan amendment, including whether Amendments No. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to Amendments No. 1 and 2 to the proposed plan amendment that are filed with the Commission, and all written communications relating to Amendments No. 1 and 2 to the proposed Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2002–01 and should be submitted by January 10, 2003.

IV. Discussion

After careful review, the Commission finds that the proposed OPRA Plan amendment, as amended by Amendments No. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder.[14] Specifically, the Commission believes that the proposed OPRA Plan amendment, which would permit OPRA to provide a best bid and offer market data service to vendors, is consistent with section 11A of the Act[15] and rule 11Aa3–2[16] thereunder in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system. Further, the Commission finds, as described further below, that it is appropriate to approve summarily the proposed OPRA Plan amendment as amended upon publication of this notice on a temporary basis for 120 days. The Commission believes such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.[17]

The Commission received two comment letters regarding the proposed OPRA Plan amendment.[18] The two commenters generally did not oppose OPRA's initiative to establish a BBO for the options markets, but did express specific concerns regarding the terms of OPRA's proposed Plan amendment.

In particular, without opposing the dissemination of a BBO in the options markets, Reuters America Inc. (''Reuters'') stated that a BBO would not solve the problems caused by exponential growth in options data over the last ten years.[19] Reuters' comment letter principally focuses on the growth in options market data, which it concludes is ''out of proportion to the economic value of the data and threatens to overwhelm customer systems and adversely impact market transparency.''[20] Reuters urges the Commission to undertake a study prior to approving OPRA's proposal to determine what options information end users want, alternatives available for providing information, and what the technological and financial constraints are in doing so.

The Commission concurs with Reuters' general concerns regarding the growth in options market data message traffic. The Commission, however, does not believe that these concerns mean that the Commission should delay approval of a new service that will be optional to vendors. As OPRA noted, it intends that the BBO service would enable vendors to offer ''a useful market data service to those customers who do not need the full OPRA service without having to develop and maintain the large-capacity systems necessary to transmit the full options market data service to those customers.''[21] OPRA does not claim that the BBO service would be a panacea for all capacity-related concerns, and recognizes that, working with vendors and the Commission, it will continue to have to address this issue.[22] In addition, OPRA believes that, although no one can predict the potential capacity savings to vendors associated with the BBO service in comparison to OPRA's full service, such savings would be significant because every quotation change disseminated over OPRA's full service would likely not result in a corresponding change to OPRA's BBO quotation. Further, OPRA suggests that the capacity saving would be greatest if vendors were permitted to disseminate only the price of the BBO without the size or market identifier, as proposed in the Vendor Agreement Proposal.[23] Finally, OPRA emphasizes that its proposed BBO service is an alternative, not in addition, to its current full service.

The Commission agrees that the proposal would provide an appropriate alternative to OPRA's full service for vendors and subscribers that do not require the full service, and that, although the size disseminated with the BBO service could be an approximation of the actual size, the Commission believes this approximate size is a reasonable alternative for certain market participants. More exact size information will still be available to market participants through OPRA's full service. Therefore, the Commission believes that the proposal is consistent with the Act.[24] Moreover, although the

[13] *See* Securities Exchange Act Release No. 46839 (November 14, 2002) (File No. SR–OPRA–2002–03) (''Vendor Agreement Proposal'').

[14] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78k–1.

[16] 17 CFR 240.11Aa3–2.

[17] *See* Exchange Act rule 11Aa3–2(c)(4).

[18] *See* BSE letter and Reuters letter, *supra* note 5.

[19] Reuters is a vendor of options market data. Reuters is an indirect wholly-owned subsidiary of Reuters Group PLC. *See* Reuters Letter, *supra* note 5.

[20] *See* Reuters letter, *supra* note 5.

[21] *See* OPRA letter, note 7.

[22] *See* OPRA letter, note 7.

[23] *See* OPRA letter, note 7. *See also* Vendor Agreement Proposal, *supra* note 13.

[24] Under the proposed revisions to the vendor agreement, a vendor would have to disclose to its customers that the included size is an approximation of the actual size, and that the actual size is available on OPRA's full quotation service. *See* Vendor Agreement Proposal, *supra* note 13.

Commission agrees that the BBO service would not resolve all capacity issues related to options market data, it believes that the BBO service is a first step in addressing these concerns. Finally, the Commission notes that this service is an alternative to the current OPRA full service. Accordingly, for any options series that a vendor chooses to disseminate market data, the vendor could disseminate last sale information together with (i) the best bid and offer from each market, as the vendor agreement currently requires, or (ii) the BBO. The Commission believes that OPRA's proposal to permit vendors to disseminate last sale information and a BBO is consistent with the purposes of Section 11A of the Act because the BBO would include the essential pricing information market participants need to make informed investment decisions. Moreover, the BBO would not impede market competition because all markets have an equal opportunity to be represented in the BBO. The Commission believes that OPRA's proposed BBO service would make it easier for vendors to disseminate this minimum essential market information as an alternative to the full quotation information or in addition to such information.

The Boston Stock Exchange, Inc. (''BSE'') offered support for the proposal in general but criticized the priority used to determine the market identifier.[25] Specifically, the BSE suggested that the proposal could discourage competition by creating a disincentive for market makers to improve the price of their quotations. In particular, BSE argued that because the market identifier for the BBO could change based solely on an increase to the size of the BBO, OPRA's service would likely identify only those exchanges that disseminate quotations with large size. As a result, BSE suggested that order flow providers would direct their orders to exchanges that improve the size but merely match the price of the BBO, thereby creating a disincentive for an exchange to offer a better price as means of attracting order flow.

The Commission is not persuaded by BSE's arguments. An exchange would have its market identifier associated with the BBO by improving the price. Therefore, the Commission believes that the proposal would give market makers an incentive to improve either the price or the size of a quote, or both. Further, the Commission notes that most disseminated quotations in the options market are updated automatically in direct response to changes in the price of the underlying security. Thus, the Commission believes that in many instances a better quote results not from a market maker's incentive to be first in time to establish the best bid or offer but, rather, from a price change in the underlying security. For this reason, the Commission is not persuaded by the BSE's argument that OPRA's proposal to calculate the best bid or offer in the options market on the basis of price and then size priority.

BSE also suggested that the method proposed to calculate the BBO was unclear under the guidelines. The Commission believes that the changes to the proposal in Amendments No. 1 and 2 provide adequate clarification as to how the BBO would be calculated.[26]

Finally, the Commission also believes that the proposal is consistent with the Commission's position in its letter submitted as *amicus curiae* in an arbitration proceeding between OPRA and Reuters.[27] In this arbitration, OPRA challenged the validity of Reuters' limited service under which it provides only the last sale and quotation information for each options class generated by the ''primary market,'' defined as the market with the greatest volume for the prior month. The Commission submitted its views on whether Reuters' dissemination to customers of options prices only from the exchange with the highest volume is consistent with the OPRA Plan and the Act, particularly the goals of fostering transparency and competition. The Commission concluded it was not.

Specifically, the Commission took the position that the dissemination by securities information vendors of timely, accurate, and complete options quotation and transaction information to market participants, including public investors, is a critical component of the national market system as it relates to options. Accordingly, as the Commission urged in its *amicus* letter, this means that the market information disseminated by a vendor must include, at a minimum, for each series of options included in its service, the last sale information generated by all exchanges and the best bid and offer currently available in the marketplace.

The Commission believes that it is appropriate to approve the proposal summarily upon publication of notice of Amendments No. 1 and 2 to permit OPRA to complete the system modifications necessary to offer the BBO service to vendors and subscribers, along with the anticipated capacity savings, which the BBO service should provide, at the soonest practicable time.

V. Conclusion

It is therefore ordered, pursuant to section 11A of the Act,[28] and rule 11Aa3–2(c)(4) thereunder,[29] that the proposed OPRA Plan amendment, as modified by Amendments No. 1 and 2, (SR–OPRA–2002–01) is approved until April 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32072 Filed 12–19–02; 8:45 am]

BILLING CODE 8010–01–U

[25] The BSE also raised concerns regarding firm quote obligations in the options markets generally. The Commission believes that these obligations are outside the scope of OPRA's function and are not relevant to the proposed amendment to the OPRA Plan.

[26] *See* Amendments No. 1 and 2, *supra* notes 1 and 2. *See* also, OPRA letter, *supra* note 7.

[27] *See* letter to Tamara B. Young, Case Administrator, American Arbitration Association, from Annette L. Nazareth, Director, Division, Commission, and David M. Becker, General Counsel, Commission, dated February 5, 2001.

[28] 15 U.S.C. 78k–1.

[29] 17 CFR 240.11Aa3–2(c)(4).

[30] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46994; File No. SR–NASD–2002–66]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to Limit Order Protection and the Facilitation of Other Customer Orders on a Riskless Principal Basis

December 13, 2002.

I. Introduction

On May 28, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (Act) [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would modify NASD Interpretative Material 2110–2 to establish a riskless principal customer facilitation exemption. Notice of the proposed rule change appeared in the **Federal Register**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

on June 7, 2002.[3] The Commission received two comment letters in response to the proposed rule change.[4] On November 26, 2002, Nasdaq submitted Amendment No. 1 to the proposed rule change.[5] For the reasons discussed below, the Commission is approving the proposed rule change and granting accelerated approval to Amendment No 1.

II. Description of the Proposed Rule Change

The proposed rule change seeks Commission approval of Nasdaq's proposal to establish a riskless principal customer facilitation exemption to NASD Interpretative Material 2110–2– Trading Ahead of Customer Limit Order (''Manning Interpretation'' or ''Manning''). NASD's current Manning Interpretation prohibits market makers from trading at prices equal or superior to customer limit orders they hold without executing those limit orders.[6]

Nasdaq has determined to adopt a customer facilitation exemption to Manning that would exempt from Manning single-priced riskless principal transactions done by market makers who are buying or selling securities to satisfy the order(s) of other customers. In these situations, since the true beneficiary of the market maker's activity is another customer, and not the firm's proprietary account, Manning will be interpreted to exempt such trading from being considered triggering trades obligating the market maker to protect other held customer limit orders.[7] Additionally, this proposed exemption is intended to addresses some of the consequences created by Manning's minimum price improvement standard in a decimal environment.

To ensure that market maker transactions that will not trigger Manning obligations are being done for the ultimate benefit of other customers, the customer facilitation exemption will be strictly construed. As such, only those market maker trades meeting all of the following requirements would be eligible for an exemption from Manning:

(1) The handling and execution of the facilitated order must satisfy the definition of a ''riskless'' principal transaction, as that term is defined in NASD Rules 4632(d)(3)(B), 4642(d)(3)(B) and 4652(d)(3)(B);

(2) A member that relies on this exemption to this interpretation must give the facilitated order the same per-share price at which the member accumulated or sold shares to satisfy the facilitated order, exclusive of any markup or markdown, commission equivalent or other fee;

(3) A member must submit, contemporaneously with the execution of the facilitated order, a report as defined in NASD Rules 4632(d)(3)(B)(ii), 4642(d)(3)(B)(ii) and 4652(d)(3)(B)(ii) to the Automated Confirmation Transaction Service;

(4) Members must have written policies and procedures to assure that riskless principal transactions relied upon for this exemption comply with NASD Rules 4632(d)(3)(B), 4642(d)(3)(B) and 4652(d)(3)(B). At a minimum these policies and procedures must require that the customer order was received prior to the offsetting transactions, and that the offsetting transactions are allocated to a riskless principal or customer account within 60 seconds of execution. Members must have supervisory systems in place that produce records that enable the member and NASD Regulation to accurately and readily reconstruct, in a time-sequenced manner, all orders on which a member relies in claiming this exemption.

Non-agency trades not meeting all of these standards would remain subject to Manning and require, upon execution, the protection and execution of appropriate limit orders in full conformity with the Interpretation. This exemption would apply only to the actual number of shares executed by the member necessary to fill the customer order(s).

In Nasdaq's view, a transaction meeting these requirements is closely akin to an agency trade and does not materially implicate a market maker's proprietary trading. Nasdaq notes that the Commission in its release concerning the availability of the section 28(e) safe harbor also highlighted the similarities in compensation transparency provided by agency and riskless principal trade reporting pursuant to NASD Rules 4632(d)(3)(B), 4642(d)(3)(B), and 6420(d)(3)(B), coupled with the requirements of Exchange Act Rule 10b–10.[8] As such, Nasdaq will not consider riskless principal trades meeting the requirements of the exemption as triggering trades for the market maker's own market-making account for purposes of Manning. This view rests primarily on the requirement that only trades where a market maker gives the customer a trade price that reflects the market maker's actual cost in acquiring the stock be eligible for the exemption. This obligation to trade 'flat' effectively removes concerns about a member breaching its fiduciary duty to customer limit orders that it holds that underlie the Manning protections in other trading contexts. Nasdaq believes that the above exemption draws an appropriate balance between the important customer protections afforded by Manning and the practical needs of market participants to assist other customers.

III. Comment Letters

The Commission received two comment letters in response to the proposed rule change. Knight Trading Group, Inc. (''Knight'') supported the proposed rule change but expressed concern about the conditions included in the exemption. In particular, Knight objected to the requirements that an offsetting riskless principal transaction must be allocated within 60 seconds of execution and that the transaction be allocated to a separate ''allocation account.'' Knight contended that these requirements were redundant in light of the proposed condition that members must have systems in place that enable a member to accurately and readily reconstruct, in a time sequenced manner, all orders upon which a member relies in claiming the exemption.

Another commenter, Schwab Capital Markets L.P. (''Schwab''), expressed a broader concern about the application of the Manning Interpretation in a decimals environment where subpenny quotes are rounded to the nearest penny. Schwab stated that under certain market conditions, a member may attempt to execute a trade at least $0.01 ahead of a customer limit order it holds pursuant to Manning but because a quote was rounded to the nearest penny the execution may trigger a fill of a customer limit order held by the member. Schwab suggested several solutions to the problem, including requiring an asterisk identifier to a rounded quote and the elimination of a penny price improvement standard

[3] *See* Securities Exchange Act Release No. 46006 (May 30, 2002), 67 FR 39455 (June 7, 2002).

[4] Letters from Michael T. Dorsey, Senior Vice President, Director of Legislative and Regulatory Affairs, Knight Trading Group, Inc. (June 28, 2002); Michael Corrao, Vice President and Chief Compliance officer, Schwab Capital Markets L.P. (July 9, 2002).

[5] *See* Letter from Thomas P. Moran, Associate General Counsel, Nasdaq (November 26, 2002). NASD's Amendment seeks to add the language ''or customer account'' to the proposed rule language for subparagraph (c) (4) of Interpretative Material 2110–2 as an alternative account to which a riskless principal offsetting transaction may be allocated in addition to the ''riskless principal account'' referenced in the original rule filing.

[6] In addition, Nasdaq has adopted price-improvement standards that obligate market makers to execute held customer limit orders unless the market maker either buys at a price sufficiently higher than a customer's buy order, or sells at a price sufficiently lower than a customer's sell order.

[7] In this sense, the exemption is similar in purpose and effect to the treatment of agency executions in IM–2110–2. Specifically, if a broker-dealer executes a customer order on an agency basis, the firm is not required to protect (execute) other customer limit orders.

[8] *See* Securities Exchange Act Release No. 45194 (January 2, 2002), 67 FR 6 (January 2, 2002).

where the spread in a security is a penny.

Nasdaq submitted Amendment No. 1 in response to one of the concerns raised by Knight. As discussed, Amendment No. 1 seeks to provide an alternative allocation account for those members for whom it may be cumbersome to establish a separate ''riskless principal account.'' With regards to Knight's concern about the requirement that an offsetting transaction be allocated to either a riskless principal or customer account within 60 seconds, Nasdaq has not sought to make any changes to the proposed rule in response to this concern as this condition is consistent with previously stated Nasdaq policy regarding the handling of mixed capacity trades and compliance with the Manning Interpretation.[9]

Further, Nasdaq has not sought any changes to the rule proposal in response to the concerns raised by Schwab. The issues raised by Schwab largely relate to the operation of Manning relative to the rounding of quotes to the nearest penny due to subpenny trading that are beyond the scope of the proposed rule change.

IV. Discussion

The Commission has reviewed carefully the proposed rule change and the two comment letters and finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[10] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6) of the Act.[11]

The Commission finds that proposed rule change is consistent with section 15A(b)(6) of the Act [12] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission finds the proposed rule change promotes the just and equitable principles of trade by continuing to provide protection to customer limit orders while removing possible impediments to filling customer orders on a riskless principal basis. In particular, the Commission finds that an exemption from Manning for single-priced riskless principal transactions done by market makers who are buying or selling securities to satisfy the order(s) of other customers is consistent with the goals of Manning since the true beneficiary of the market maker's activity is another customer and not the firm's proprietary account. Additionally, we believe the proposed exemption will appropriately address some of the concerns raised by members regarding the consequences created by Manning's minimum price improvement standard in a decimal environment.

The Commission also finds good cause for approving proposed Amendment No. 1 prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. The Amendment provides an alternative allocation account, other than a riskless principal account, as a more efficient means of complying with the conditions of the exemption for some members for whom establishing a separate riskless principal account may be cumbersome. Approving the Amendment on an accelerated basis will allow some members to implement the exemption without having to unnecessarily establish a separate riskless principal account. For this reason, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the Amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2002–66 and should be submitted by January 10, 2003.

V. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with section 15A(b)(6),[13] in particular.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD–2002–66), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32073 Filed 12–19–02; 8:45 am]

BILLING CODE 8010–01–P

[9] *See* NASD Notice to Members 01–85, at Question 7 and Notice to Members 95–67, at Question 5.

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78o–3(b)(6).

[12] *Id.*

[13] 15 U.S.C. 78o–3(b)(6).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4234]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Devonshire Inheritance: Five Centuries of Collecting at Chatsworth''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.),* Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''The Devonshire Inheritance: Five Centuries of Collecting at Chatsworth,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at Dixon Gallery and Gardens, Memphis, TN from on or about April 24, 2003, to on or about August 17, 2003, at Bard Graduate Center for Studies in the Decorative Arts, New York, NY from on or about March 10, 2004 to on or about June 20, 2004, at Peabody Essex Museum, Salem, MA from on or about August 14, 2004 to on or about November 7, 2004, at the Society of the Four Arts, Palm Beach, FL from on or about December 7, 2004 to

on or about January 16, 2005, at Tyler Museum of Art, Tyler, TX from on or about July 16, 2005 to on or about October 8, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, D.C. 20547–0001.

Dated: December 5, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–32124 Filed 12–19–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4233]

Culturally Significant Objects Imported for Exhibition Determinations: ''Matisse Picasso''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, ''Matisse Picasso,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, New York, from on or about February 12, 2003, to on or about May 19, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: December 12, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–32123 Filed 12–19–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4235]

An Invitation To Comment on the 2002 Progress Report on the Canada-United States Air Quality Agreement

The International Joint Commission invites public comment on progress by the United States and Canada in reducing transboundary air pollution under the 1991 Canada-United States Agreement on Air Quality. The 2002 Progress Report provides updates on acid rain control programs, ground-level ozone controls, cooperative efforts on particulate matter, data measurement and analysis, notification of sources of transboundary air pollution, and the results of the second five-year review of the agreement, among other issues. The Commission will provide a synthesis of comments received to the two governments and the public as directed by the Agreement.

The Governments of the United States and Canada signed an Agreement on Air Quality on March 13, 1991. The purpose of the Agreement was to establish a practical and effective instrument to address shared concerns on transboundary air pollution.

Under the terms of the Agreement, the Governments' bilateral Air Quality Committee reviews progress made in the implementation of the Agreement, prepares and submits periodic progress reports to the Governments, and refers each progress report to the International Joint Commission for solicitation of public input. The 2002 Progress Report of the Committee is now available and may be obtained from:

Clean Air Markets Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6204N), Washington, DC 20460. *Acid Rain Hotline:* (202) 564–9620

Environment Canada, Inquiry Centre, 351 St. Joseph Blvd., Hull, Quebec, K1A 0H3, (800) 668–6767.

The full report is also available at the following sites on the World Wide Web: *http://www.epa.gov/airmarkets/usca/2002report.html http://www.ec.gc.ca/air/qual/2002/index_e.html*

Under the Agreement, the Governments assigned the International Joint Commission the responsibility of inviting comments on each progress report of the Air Quality Committee. The International Joint Commission invites comment on any aspect of the 2002 Progress Report. Please send comments in writing by February 28, 2003, to either address below, or contact us if you have any questions about the comment process.

International Joint Commission, United States Section, 1250 23rd Street, NW., Suite 100, Washington, DC 20440. *Telephone:* (202) 736–9000. *Fax:* (202) 736–9015, E-mail: *commission@washington.ijc.org*

International Joint Commission, Canadian Section, 234 Laurier Ave., W., 22nd Floor, Ottawa, ON K1P 6K6. *Telephone:* (613) 995–2984. *Fax:* (613) 993–5583. *commission@ottawa.ijc.org*

Dated: December 16, 2002.

Gerry Galloway,

Secretary, United States Section, International Joint Commission.

[FR Doc. 02–32125 Filed 12–19–02; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of Delta/Northwest/Continental Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Extension of waiting period.

SUMMARY: As required by 49 U.S.C. 41720, Delta Air Lines, Northwest Airlines, and Continental Airlines have submitted code-sharing and frequent-flyer program reciprocity agreements to the Department for review. That statute requires the submission of such agreements between major U.S. passenger airlines at least thirty days before the agreements' proposed effective date. The statute empowers the Department to extend the waiting period for these agreements at the end of the thirty-day period. The Department has determined to extend the waiting period for the Delta/Northwest/Continental code-share agreements for an additional 30 days, from December 21, 2002, to January 20, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: On August 23, Delta, Northwest, and Continental submitted code-sharing and frequent-

flyer program reciprocity agreements to us for review under 49 U.S.C. 41720. That statute requires such agreements between major U.S. airlines to be submitted to us more than 30 days before their planned implementation. We may extend that waiting period by up to 150 days for code-sharing agreements and 60 days for other types of agreements. We have previously extended the waiting period for the code-sharing agreement for a total of 90 days, and we extended the waiting period for the frequent flyer agreement for 60 days, the maximum period authorized by the statute. 67 FR 59328 (September 20, 2002); 67 FR 64960 (October 22, 2002); 67 FR 69804 (November 19, 2002). We have determined to extend the waiting period for the code-sharing agreement for an additional 30 days to give us time to complete our review of the Delta/Continental/Northwest agreements.

As we have stated earlier, the purpose of our review of the agreements is to see whether they may reduce competition. Our governing statute specifically requires us to consider, in the public interest, the objectives of ''avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier * * * unreasonably to increase prices, reduce services, or exclude competition in air transportation.'' 49 U.S.C. 40101(a)(10). If we were to determine that, separately or in combination, aspects of the agreements constitute unfair methods of competition under 49 U.S.C. 41712, we could bar the airlines from implementing them. Unfair methods of competition are airline agreements and other practices that violate the antitrust laws or antitrust principles. *See United Air Lines* v. *CAB,* 766 F.2d 1101 (7th Cir. 1985). The purpose of our current review is to determine whether we should institute a formal proceeding to determine whether the agreements and the three airlines' proposed relationship violate section 41712.

We have informally reviewed the agreements submitted by Delta, Continental, and Northwest, discussed the competitive issues with the Justice Department, and given outside parties the opportunity to review unredacted copies of the agreements and to submit comments based on that review and other information available to such commenters. 67 FR 69804. We have received comments on the proposed agreements from interested parties as recently as today. We have also received complaints that the three airlines have allegedly engaged in anti-competitive conduct in the recent past. We have met with Delta, Continental, and Northwest, and with other interested parties. In their written comments, a number of parties have requested that we extend the waiting period to allow additional time for consideration. *See, e.g.*, the November 15, 2002, letter from AirTran, America West, Frontier, JetBlue, Midwest Express, Southwest, and Spirit; the November 12, 2002, letter from Tom Miller, the Attorney General of Iowa, written on behalf of himself and the Attorneys General of Connecticut, the District of Columbia, Florida, Maine, Minnesota, New York, and Vermont; the November 13, 2002, letter from Senator John Ensign; the November 4, 2002, letter from Senator James M. Inhofe; and the October 29, 2002, letter from Senator Russell D. Feingold.

While we have not made any final decision, we have advised the three airlines that we believe the agreements as presented to us raise competitive issues. We have discussed our concerns in detail with the three airlines. Because we need additional time to complete our review of the agreements and to complete further discussions with interested parties, we are extending the waiting period to January 20, 2003.

Issued in Washington, DC on December 16, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–32195 Filed 12–19–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13978]

Random Drug Testing Rate for Covered Crewmembers

AGENCY: Coast Guard, DOT.

ACTION: Notice of minimum random drug testing rate.

SUMMARY: The Coast Guard has set the calendar year 2003 minimum random drug testing rate at 50 percent of covered crewmembers. An evaluation of the 2001 Management Information System (MIS) data collection forms submitted by marine employers determined that random drug testing on covered crewmembers for the calendar year 2001 resulted in positive test results 1.63 percent of the time. Based on this percentage, we will maintain the minimum random drug testing rate at 50 percent of covered crewmembers for the calendar year 2003.

DATES: The minimum random drug testing rate is effective January 1, 2003 through December 31, 2003. You must submit your 2002 MIS reports no later than March 15, 2003.

ADDRESSES: You must mail your annual MIS report to Commandant (G–MOA), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 2404, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Robert C. Schoening, Drug and Alcohol Program Manager, Office of Investigations and Analysis (G–MOA), U.S. Coast Guard Headquarters, telephone 202–267–0684. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: Under 46 CFR 16.230, the Coast Guard requires marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels. All marine employers are required to collect and maintain a record of drug testing program data for each calendar year, January 1 through December 31. You must submit this data by 15 March of the following year to the Coast Guard in an annual MIS report (Form CG–5573 found in Appendix B of 46 CFR 16).

You may either submit your own MIS report or have a consortium or other employer representative submit the data in a consolidated MIS report. The chemical drug testing data is essential to analyze our current approach for deterring and detecting illegal drug abuse in the maritime industry.

Since 2001 MIS data indicates that the positive random testing rate is greater than one percent industry-wide (1.63 percent), the Coast Guard announces that the minimum random drug testing rate is set at 50 percent of covered employees for the period of January 1, 2003 through December 31, 2003 in accordance with 46 CFR 16.230(e). Each year we will publish a notice reporting the results of the previous calendar year's MIS data, and the minimum annual percentage rate for random drug testing for the next calendar year.

Dated: December 13, 2002.

L.L. Hereth,

Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–32142 Filed 12–19–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13332; Notice 2]

Decision That Nonconforming 1993 Mercedes Benz S Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1993 Mercedes Benz S Series passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1993 Mercedes Benz S Series passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1993 Mercedes Benz S Series), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Sunshine Car Import L.C. of Cape Coral, Florida (Registered Importer 01–289) petitioned NHTSA to decide whether 1993 Mercedes Benz S Series passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 23, 2002 (67 FR 59594) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice of the petition. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–395 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2003 Mercedes Benz S Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 2003 Mercedes Benz S Series passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 17, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–32143 Filed 12–19–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34267]

Morristown & Erie Railway, Inc.—Operation Exemption—Somerset Terminal Railroad Corporation

Morristown & Erie Railway, Inc. (M&E), a Class III rail carrier, has filed an amended verified notice of exemption [1] under 49 CFR 1150.41 to operate over approximately 1.25 miles of rail line located in the Township of Bridgewater and the Borough of Manville, Somerset County, NJ, that is part of a rail line known as the Reading Company New York Branch (also known as the Raritan Valley Connecting Track), and identified as Line Code 0326, between milepost 57.25 at Manville Yard and milepost 58.50 at a junction with New Jersey Transit's commuter line. In the amended notice, M&E states that it proposes to obtain rights from Somerset Terminal Railroad Corporation (STRC), a Class III rail carrier, to operate over this line of railroad that is owned by Joseph C. Horner.[2]

M&E states that, as provided in an assignment of contracts agreement dated October 1, 2002, between M&E and STRC, STRC proposes to assign M&E rights which will permit M&E to operate the line.[3] By letters filed on October 17, 2002, November 20, 2002, and November 26, 2002, Standard Terminal Railroad of New Jersey, Incorporated (Standard), alleged that STRC does not actually possess the rights it seeks to assign to M&E and requested that the exemption be stayed. By decision served on November 27, 2002, in this proceeding, the request for stay was denied.

Publication of this notice and effectiveness of the exemption does not

[1] M&E originally tendered a notice of exemption for filing on October 7, 2002, but additional and corrected information was subsequently filed on November 20, 2002.

[2] In *Somerset Terminal Railroad Corporation—Operation Exemption—A Line of Railroad Owned by Joseph C. Horner,* STB Finance Docket No. 33999 (STB served Feb. 13, 2001), STRC, then a noncarrier, was granted an exemption under 49 CFR 1150.31 to operate the line pursuant to a perpetual, irrevocable, exclusive and assignable easement.

[3] In addition, STRC will assign the right for M&E to operate over a railroad bridge that crosses the Raritan River, which connects the properties on which STRC has its easement. STRC is a party to a Land Use Agreement with Mr. Horner, dated May 1, 2000, and holds an easement to operate over the properties of Mr. Horner. Pursuant to the assignment of contracts agreement, M&E's operating rights will be for a term of 15 years, subject to renewal, extension, and termination. M&E proposes to operate the line to connect with CSX Transportation, Inc., and Norfolk Southern Railway Company.

constitute any finding by the Board concerning the ownership of the property involved. The exemption merely permits M&E and STRC to consummate the described transaction if and when they, in fact, have the legal capacity to do so. The question of whether or not STRC possesses the rights it wishes to assign is currently pending in the United States Bankruptcy Court. *In the Matter of Bridgewater Resources, Inc.,* No. 00–60057 (WHG) (D.N.J.).

M&E certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual freight revenues are not projected to exceed $5 million.

M&E states that operations will not commence until all of the contingencies contained in the assignment of contracts agreement are met.[4] The earliest the exemption could have been consummated was November 27, 2002, the effective date of the exemption (7 days after the amended exemption was filed).

This transaction is exempt under 49 CFR 1150.41(c).[5] If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34267, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John K. Fiorilla, 390 George Street, P.O. Box 1185, New Brunswick, NJ 08903.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: December 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–32076 Filed 12–19–02; 8:45 am]

BILLING CODE 4915–00–P

[4] These contingencies include a court's determination that STRC possesses the rights it intends to assign to M&E and the consent of Mr. Horner.

[5] In order to qualify for a change in operators exemption, an applicant must give notice to shippers on the line. *See* 49 CFR 1150.42(b). To ensure that shippers are informed of the change of operators on the line, M&E is directed to provide notice of the change to any shippers on the line and to certify to the Board that it has done so.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34283]

RailAmerica, Inc. et al.—Corporate Family Reorganization Exemption—Western Illinois Railway Company

RailAmerica, Inc. (RailAmerica), a noncarrier holding company, and its noncarrier subsidiary, Palm Beach Rail Holdings, Inc. (PBRH), filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(3) for them to continue in control of the Western Illinois Railway Company (WIRC), when it becomes a rail carrier.

The transaction was expected to be consummated on or shortly after November 27, 2002.

In a related matter, *Western Illinois Railway Company—Acquisition Exemption—Toledo, Peoria & Western Railway Company,* STB Finance Docket No. 34282, WIRC filed a notice of exemption to acquire from the Toledo, Peoria & Western Railway Corporation (TP&W) the rail, ties, and certain improvements on a 71.5-mile rail line in Hancock, McDonough, Fulton, and Peoria Counties, IL.[1]

RailAmerica controls one Class II and 31 Class III railroads that operate in the States of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Kansas, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Texas, Vermont, Virginia, and Washington.

Applicants state that there will not be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. Applicant also states that the transaction will not result in any adverse change in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The purpose of this transaction is to improve the financial viability of the applicants.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves the control of one Class II rail carrier and one or more Class III rail carriers, the transaction will be made subject to the employee protective conditions described in *Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR,* 2 S.T.B. 218 (1997).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34283, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: December 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–32075 Filed 12–19–02; 8:45 am]

BILLING CODE 4915–00–P

[1] On November 26, 2002, RailAmerica, PBRH, and WIRC jointly filed a motion to dismiss both the continuance in control in this case and the acquisition in STB Finance Docket No. 34282 for lack of Board jurisdiction. The motion will be handled in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 34079]

San Jacinto Rail Limited—Construction Exemption—And The Burlington Northern and Santa Fe Railway Company—Operation Exemption—Build-Out to the Bayport Loop Near Houston, Harris County, TX

AGENCIES: *Lead:* Surface Transportation Board. *Cooperating:* U.S. Coast Guard, Federal Aviation Administration, National Aeronautics and Space Administration.

ACTION: Extension of comment period for the Draft Environmental Impact Statement.

SUMMARY: Comments on the Draft Environmental Impact Statement (Draft EIS) issued by the Surface Transportation Board's Section of Environmental Analysis (SEA) and the three cooperating agencies on December 6, 2002 in this proceeding were to be submitted by January 27, 2003. In response to a number of written requests for an extension of the comment period, SEA is advising all interested persons that the comment period will be

extended for an additional twenty-five days. The comment period will now end February 21, 2003.

Most of the extension requests sought an additional forty-five days to submit comments on the Draft EIS. To balance these requests for an extension with the need to move the environmental review process forward without undue delay, SEA believes that a twenty-five day extension to and including February 21, 2003 is appropriate. In order to issue the Final EIS in a timely manner, no further extensions will be granted absent compelling, unforeseen circumstances.

Written comments on the Draft EIS must be postmarked or faxed by the February 21, 2003 due date. SEA encourages written comments by all interested parties and agencies and members of the general public on all aspects of this Draft EIS. SEA will consider all timely comments in preparing the Final EIS, and the Final EIS will respond to all timely substantive comments. When submitting comments on the Draft EIS, please be as specific as possible and substantiate your concerns and recommendations. Please mail written comments to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

To ensure proper handling of your comments, please mark your submission: Attention: Dana White, Section of Environmental Analysis, Environmental Filing FD No. 34079.

Due to delays in the delivery of mail currently being experienced by Federal agencies in Washington, DC, SEA encourages that comments be faxed to 1–866–293–4979. Faxed comments will be given the same weight as mailed comments; therefore, persons submitting comments by fax do not have to also send comments by mail. Further information about the project can be obtained by calling SEA's toll-free number at 1–888–229–7857 (TDD for the hearing impaired 1–800–877–8339).

As stated in our December 6, 2002 Notice of Availability, and in the Draft EIS, SEA will host two public meetings on the Draft EIS in January 2003. At each meeting, SEA will give a brief presentation and interested parties will be invited to make oral comments. SEA will have a transcriber present to record the oral comments in either English or Spanish. Written comments may also be submitted at the meetings. Meetings will be held at the following locations, dates, and times: Pasadena Convention Center, 7902 Fairmont Parkway, Pasadena, TX, January 14, 2003, 7–9 pm, Cesar E. Chavez High School, 8501 Howard Drive, Houston, TX, January 15, 2003, 7–9 pm. Both meetings will follow the same format and agenda; it is not necessary to attend both meetings.

Persons wanting to speak at a public meeting are strongly urged to pre-register by calling the toll-free number at 1–888–229–7857 (TDD for the hearing impaired 1–800–877–8339) and leaving their name, telephone number, the name of any group, business, or agency affiliation, if applicable, and the date of the meeting at which they wish to speak. The deadline for pre-registration for all meetings is January 7, 2003.

Persons will be called to speak at each meeting in the order in which they pre-registered. Those wishing to speak who did not pre-register will be accommodated at each meeting as time allows. Those wishing to speak at more than one meeting will also be accommodated as time allows and after all others have had an opportunity to participate. As SEA would like as many persons as possible to participate and given that there will be a limited amount of time at each meeting, all speakers are strongly encouraged to prepare summary oral comments, and submit detailed comments in writing. SEA also encourages groups of individuals with similar comments to designate a representative to speak for them. A translator will be available at both meetings for Spanish-speakers wishing to speak.

FOR FURTHER INFORMATION CONTACT: Ms. Dana White, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, or SEA's toll-free number for this project at 1–888–229–7857 (TDD for the hearing impaired 1–800–877–8339). The website for the Surface Transportation Board is *http://www.stb.dot.gov.*

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 02–32078 Filed 12–19–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34282]

Western Illinois Railway Company—Acquisition Exemption—Toledo, Peoria & Western Railway Corporation

The Western Illinois Railway Company (WIRC), a noncarrier, filed a notice of exemption under 49 CFR 1150.31 to acquire from the Toledo, Peoria & Western Railway Corporation (TP&W) the rail, ties, and certain improvements on a 71.5-mile rail line, between milepost 194.5 at La Harpe and milepost 123.0 at Peoria, in Hancock, McDonough, Fulton, and Peoria Counties, IL (the La Harpe Line or Line).[1] TP&W will retain the common carrier obligation and the permanent and exclusive right to operate the Line, the right to maintain and renew the Line, and the right to require WIRC to transfer the Line's physical assets in the event TP&W agrees or is required to sell the Line under an offer of financial assistance pursuant to 49 U.S.C. 10904.[2]

The transaction was expected to be consummated on or after November 27, 2002.

In a related matter, RailAmerica, Inc. (RailAmerica) and Palm Beach Rail Holdings, Inc. (PBRH), a noncarrier subsidiary of RailAmerica, filed a notice of exemption in *RailAmerica, Inc. et al.—Corporate Family Reorganization Exemption—Western Illinois Railway Company,* STB Finance Docket No. 34283, for PBRH to continue in control of WIRC when it becomes a rail carrier.[3]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34282, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

[1] *In SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL,* STB Finance Docket No. 33995 *et al.* (STB served Oct. 17, 2002), the Board ordered SF&L Railway, Inc. (SF&L), to reconvey to TP&W the operating easement over, and the rail, ties and certain improvements on the 71.5-mile rail line acquired under the class exemption in that proceeding that was served and published in the **Federal Register** at 66 FR 9411 on February 7, 2001. A petition for reconsideration was filed by SF&L on December 13, 2002.

[2] On September 3, 2002, SF&L filed a petition for exemption to abandon the La Harpe Line. *See SF&L Railway, Inc.—Abandonment Exemption—in Hancock, McDonough, Fulton, and Peoria Counties, IL,* STB Docket No. AB–448 (Sub-No. 2X) (STB served Sept. 23, 2002). Notice was served and published in the **Federal Register** at 67 FR 59596 on September 23, 2002. TP&W, on October 30, 2002, filed a motion for permission to substitute for SF&L in STB Docket No. AB–448 (Sub-No. 2X). A decision on the motion will be issued in the near future.

[3] On November 26, 2002, RailAmerica, PBRH, and WIRC jointly filed a motion to dismiss both the acquisition in this case and the continuance in control in STB Finance Docket No. 34283 for lack of Board jurisdiction. The motion will be handled in a separate decision.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: December 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–32077 Filed 12–19–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Notice of Intent to Request Renewal From the Office of Management and Budget (OMB) of Two Current Public Collections of Information

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice.

SUMMARY: TSA invites public comment on two currently approved information collection requirements abstracted below that will be submitted to OMB for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by February 18, 2003.

ADDRESSES: Comments may be mailed or delivered to A. Lawan Jackson, Office of Finance and Administration, Office of Records Management, TSA-14, Room 4616, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: A. Lawan Jackson at the above address or by telephone (202) 385–1644; facsimile (202) 493–1731; e-mail *lawan.jackson@tsa.dot.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission to renew clearance of the following information collections, TSA solicits comments in order to—

(1) evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

1. *2110–0005; Indirect Air Carrier Security.* Section 44903(b) of Title 49 U.S.C. directed the Federal Aviation Administration (FAA) to prescribe regulations (14 CFR part 109), to protect passengers and property on an aircraft operating in air transportation or intrastate air transportation against acts of criminal violence and aircraft piracy, and the public interest in the promotion of air transportation and intrastate air transportation. On November 19, 2001, the Aviation and Transportation Security Act, Public Law 107–71, transferred this responsibility to TSA. These standards were developed and implemented in 49 CFR part 1548. With the transfer of these responsibilities to TSA, the corresponding collection of information was also transferred from FAA to TSA. The previous OMB clearance number for FAA was OMB 2120–0505. The TSA number is now OMB 2110–0005. The current estimated annual reporting burden is 664 hours.

2. *2110–0010; Explosives Detection System Certification Testing.* Section 108 of the Aviation Security Improvement Act of 1990, Public Law 101–604, provides in pertinent part that no deployment or purchase of any explosive detection equipment pursuant to sections 108.7(b)(8) and 108.20 of Title 14, Code of Federal Regulations, or any similar rule, shall be required after the date of the enactment of this section, unless the FAA Administrator certifies that, based on the results of tests conducted pursuant to protocols developed in consultation with expert scientists from outside the FAA such equipment alone or as part of an integrated system can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material, which would be likely to be used to cause catastrophic damage to commercial aircraft. On November 19, 2001, the Aviation and Transportation Security Act, Public Law 107–71, transferred this responsibility to TSA. With the transfer of this responsibility to TSA, the corresponding collection of information was also transferred from FAA to TSA. The previous OMB clearance number for FAA was OMB 2120–0577. The TSA number is now OMB 2110–0010. The current estimated annual reporting burden is 775 hours.

Issued in Washington, DC, on December 16, 2002.

Susan T. Tracey,

Deputy Chief Administrative Officer.

[FR Doc. 02–32139 Filed 12–19–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0051]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to accurately reimburse State Approving Agencies (SAA) for expenses incurred in the approval and supervision of education and training programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 18, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0051'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites

comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Quarterly Report of State Approving Agency Activities, VA Form 22–7398.

OMB Control Number: 2900–0051.

Type of Review: Extension of a currently approved collection.

Abstract: VA has the authority to reimburse SAAs for necessary salary, and fringe and travel expenses incurred in the approval and supervision of education and training programs. VA makes the reimbursement retrospectively on a monthly or quarterly basis after receiving an itemized invoice from SAA supported by visit reports and program documents. VA Form 22–7398 serves as the form for SAAs to request reimbursement. The information is used to ensure that the reimbursements are proper and accurate. Without the report, VA would have no means to compare the efficiency and effectiveness of SAAs.

Affected Public: State, Local or Tribal Governments, and Federal Government.

Estimated Annual Burden: 228 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Quarterly.

Estimate Annual Reponses: 228.

Estimated Number of Respondents: 57.

Dated: December 10, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–32091 Filed 12–19–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0110]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information in determining a release of liability and substitution of entitlement of veteran-sellers to the Government on GI or direct loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 18, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *mailto:irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0110'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan, VA Form 26–6381.

OMB Control Number: 2900–0110.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C., Section 3713(a) provides that when a veteran disposes of his or her interest in the property securing the loan, VA may, upon request, release the original veteran-borrower from personal liability to the Government only if three requirements are fulfilled. First, the loan must be current. Second, the purchaser must assume all of the veteran's liability to the Government and the mortgage holder on the guaranteed loan. Third, the purchaser must qualify from a credit and income standpoint, to the same extent as if he or she were a veteran applying for a VA-guaranteed loan in the same amount as the loan being assumed. Veterans who are selling their homes by assumption rather than requiring purchasers to obtain their own financing to pay off the loan must complete this form. The information furnished is essential to determinations for assumption approval, release of liability, and substitution of entitlement.

Affected Public: Individuals or households, business or other for profit.

Estimated Annual Burden: 596 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,575.

Dated: December 10, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–32092 Filed 12–19–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0262]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affair.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved

collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to identify persons authorized to certify reports on behalf of an educational institution or job training establishment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 18, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0262'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Designation of Certifying Official(s), VA Form 22–8794.

OMB Control Number: 2900–0262.

Type of Review: Extension of a currently approved collection.

Abstract: The law requires specific certifications from an educational institution or job training establishment that provides approved training for veterans and other eligible persons. VA Form 22–8794 serves as the report from the school or job training establishment as to those persons authorized to submit these certifications. The information is used to ensure that educational benefits are not made improperly based on a report from someone other than a designated certifying official.

Affected Public: State, Local or Tribal Government, business or other for-profit, and not for-profit institutions.

Estimated Annual Burden: 333 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

Dated: December 10, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–32093 Filed 12–19–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Office; Government Owned Invention Available for Licensing

AGENCY: Research and Development Office, Department of Veterans Affairs.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Mindy Aisen, MD, Department of Veterans Affairs, Director Technology Transfer Program, Research and Development Office, 810 Vermont Avenue NW, Washington, DC 20420; fax: 202–275–7228; e-mail at *mindy.aisen@mail.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: 10/230,393 ''Microstimulator Neural Prosthesis''.

Dated: December 13, 2002.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 02–32090 Filed 12–19–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 245

Friday, December 20, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

Correction

In notice document 02–31454 beginning on page 76729 in the issue of Friday, December 13, 2002, make the following corrections:

1. On page 76730, in the first column, in section (b)3., ''Armburuster'' should read ''Armbruster''.

2. On the same page, in the second column, in section (b)21., ''Judity'' should read ''Judith''.

3. On the same page, in the same cloumn, in section (b)30., ''Kelley'' should read ''Kelly''.

[FR Doc. C2–31454 Filed 12–19–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB33

Emergency Evacuations; Emergency Temporary Standard

Correction

In rule document 02–31358 beginning on page 76658 in the issue of Thursday, December 12, 2002 make the following correction:

§75.1502 [Corrected]

On page 76665, in the third column, in §75.1502, in paragraph (c)(2), in the sixth line, ''(a)(1)'' should read, ''(a)(1) through (4)''.

[FR Doc. C2–31358 Filed 12–19–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,

December 20, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2002–0052; FRL–7418–1]

RIN 2060–AG72

National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for the lime manufacturing source category. The lime manufacturing emission units regulated would include lime kilns, lime coolers, and various types of materials processing operations (MPO). The EPA has identified the lime manufacturing industry as a major source of hazardous air pollutant (HAP) emissions including, but not limited to, hydrogen chloride (HCl), antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, mercury, nickel, and selenium. Exposure to these substances has been demonstrated to cause adverse health effects such as cancer; irritation of the lung, skin, and mucus membranes; effects on the central nervous system; and kidney damage. The proposed standards would require all major sources subject to the rule to meet HAP emission standards reflecting the application of maximum achievable control technology (MACT). Implementation of the standards as proposed would reduce non-volatile metal HAP emissions from the lime manufacturing industry source category by approximately 21 megagrams per year (Mg/yr) (23 tons per year (tons/yr)) and would reduce emissions of particulate matter (PM) by 14,000 Mg/yr (16,000 tons/yr).

DATES: *Comments.* Submit comments on or before February 18, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by January 9, 2003, a public hearing will be held on January 21, 2003.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, NC.

FOR FURTHER INFORMATION CONTACT: *General and technical information.* Joseph P. Wood, P.E., Minerals and Inorganic Chemicals Group, Emissions Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5446, electronic mail (e-mail) address *wood.joe@epa.gov.*

Methods, sampling, and monitoring information. Michael Toney, Source Measurement Technology Group, Emission Monitoring and Analysis Division (D205–02), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5247, e-mail address *toney.mike@epa.gov.*

Economic impacts analysis. Eric Crump, Innovative Strategies and Economics Group, Air Quality Strategies and Standards Division (C339–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–4719, e-mail address *crump.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS	Examples of regulated entities
	32741	Commercial lime manufacturing plants.
	33111	Captive lime manufacturing plants at iron and steel mills.
	3314	Captive lime manufacturing plants at nonferrous metal production facilities.
	327125	Producers of dead-burned dolomite (Non-clay refractory manufacturing).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7081 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0052. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or review public comments, access the index of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is

restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Comments Submitted Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select ''search'' and then key in Docket ID No. OAR–2002–0052. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2002–0052. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in Wordperfect or ASCII file format. Avoid the use of special characters and any form of encryption.

Comments Submitted By Mail. Send your comments (in duplicate, if possible) to: Lime Manufacturing NESHAP Docket, EPA Docket Center (Air Docket), U.S. EPA West, Mail Code 6102T, Room B108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0052.

Comments Submitted By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center, U.S. EPA West, Mail Code 6102T, Room B108, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2002–0052. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document.

Comments Submitted By Facsimile. Fax your comments to: (202) 566–1741, Attention Lime Manufacturing NESHAP Docket, Docket ID No. OAR–2002–0052.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27709, Attention Joseph Wood, Docket ID No. OAR–2002–0052. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mr. Joseph Wood, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Research Triangle Park, NC 27711, telephone number (919) 541–5446, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Mr. Joseph Wood to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Outline. The information presented in this preamble is organized as follows:

I. Introduction

A. What Is the Purpose of the Proposed Rule?

The purpose of the proposed rule is to protect the public health by reducing emissions of HAP from lime manufacturing plants.

B. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Lime Manufacturing category of major sources covered by today's proposed NESHAP was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP.

C. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the maximum achievable control technology (MACT).

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

D. How Was the Proposed Rule Developed?

We used several resources to develop the proposed rule, including questionnaire responses from industry, emissions test data, site surveys of lime manufacturing facilities, operating and new source review permits, and permit applications. We researched the relevant technical literature and existing State and Federal regulations and consulted and met with representatives of the lime manufacturing industry, State and local representatives of air pollution agencies, Federal agency representatives (*e.g.*, United States Geological Survey) and emission control and emissions measurement device vendors in developing the proposed rule. We also conducted an extensive emissions test program. Industry representatives provided emissions test data, arranged site surveys of lime manufacturing plants, participated in the emissions test program, reviewed draft questionnaires, provided information about their manufacturing processes and air pollution control technologies, and identified technical and regulatory issues. State representatives provided existing emissions test data, copies of permits and other information.

E. What Are the Health Effects of the HAP Emitted From the Lime Manufacturing Industry?

The HAP emitted by lime manufacturing facilities include, but are not limited to, HCl, antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, mercury, nickel, and selenium. Exposure to these compounds has been demonstrated to cause adverse health effects when present in concentrations higher than those typically found in ambient air.

We do not have the type of current detailed data on each of the facilities that would be covered by the proposed NESHAP, and the people living around the facilities, that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and the potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described below occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the proposed rule would reduce emissions and subsequent exposures. We also note one exception to this statement, namely that human exposures to ambient levels of HCl resulting from lime manufacturing facilities' emissions were estimated by industry as part of the risk assessment they conducted for purposes of demonstrating, pursuant to section 112(d)(4) of the CAA, that HCl emissions from lime kilns are below the threshold level of adverse effects, with an ample margin of safety.

The HAP that would be controlled with the proposed rule are associated with a variety of adverse health effects, including chronic health disorders (*e.g.*, irritation of the lung, skin, and mucus membranes; effects on the central nervous system; cancer; and damage to the kidneys), and acute health disorders

(*e.g.*, lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the kidney and central nervous system). We have classified three of the HAP—arsenic, chromium, and nickel—as human carcinogens and three others—beryllium, cadmium, and lead—as probable human carcinogens.

F. What Are Some Lime Manufacturing Industry Characteristics?

There are approximately 70 commercial and 40 captive lime manufacturing plants in the U.S., not including captive lime manufacturing operations at pulp and paper production facilities. About 30 of the captive plants in the U.S. produce lime that is used in the beet sugar manufacturing process, but captive lime manufacturing plants are also found at steel, other metals, and magnesia production facilities. Lime is produced in about 35 States and Puerto Rico by about 47 companies, which include commercial and captive producers (except for lime manufacturing plants at pulp and paper production facilities), and those plants which produce lime hydrate only.

G. What Are the Processes and Their Emissions at a Lime Manufacturing Plant?

There are many synonyms for lime, the main ones being quicklime and its chemical name, calcium oxide. High calcium lime consists primarily of calcium oxide, and dolomitic lime consists of both calcium and magnesium oxides. Lime is produced via the calcination of high calcium limestone (calcium carbonate) or other highly calcareous materials such as aragonite, chalk, coral, marble, and shell; or the calcination of dolomitic limestone. Calcination occurs in a high temperature furnace called a kiln, where lime is produced by heating the limestone to about 2000° F, driving off carbon dioxide in the process. Dead-burned dolomite is a type of dolomitic lime produced to obtain refractory characteristics in the lime.

The kiln is the heart of the lime manufacturing plant, where various fossil fuels (such as coal, petroleum coke, natural gas, and fuel oil) are combusted to produce the heat needed for calcination. There are five different types of kilns: rotary, vertical, double-shaft vertical, rotary hearth, and fluidized bed. The most popular is the rotary kiln, but the double-shaft vertical kiln is an emerging new kiln technology gaining in acceptance because of its energy efficiency. Rotary kilns may also have preheaters associated with them to improve energy efficiency. As discussed further in this preamble, additional energy efficiency is obtained by routing exhaust from the lime cooler to the kiln, a common practice. Emissions from lime kilns include, but are not limited to, metallic HAP, HCl, PM, sulfur dioxide, nitrogen oxides, and carbon dioxide. These emissions predominately originate from compounds in the limestone feed material and fuels (*e.g.*, metals, sulfur, chlorine) and are formed from the combustion of fuels and the heating of feed material in the kiln.

All types of kilns use external equipment to cool the lime product, except vertical (including double-shaft) kilns, where the cooling zone is part of the kiln. Ambient air is most often used to cool the lime (although a few use water as the heat transfer medium), and typically all of the heated air stream exiting the cooler goes to the kiln to be used as combustion air for the kiln. The exception to this is the grate cooler, where more airflow is generated than is needed for kiln combustion, and consequently a portion (about 40 percent) of the grate cooler exhaust is vented to the atmosphere. We estimate that there are about five to ten kilns in the U.S. that use grate coolers. The emissions from grate coolers include the lime dust (PM) and the trace metallic HAP found in the lime dust.

Lime manufacturing plants may also produce hydrated lime (also called calcium hydroxide) from some of the calcium oxide (or dolomitic lime) produced. Hydrated lime is produced in a hydrator via the chemical reaction of calcium oxide (or magnesium oxide) and water. The hydration process is exothermic, and part of the water in the reaction chamber is converted to steam. A wet scrubber is integrated with the hydrator to capture the lime (calcium oxide and calcium hydroxide) particles carried in the gas steam, with the scrubber water recycled back to the hydration chamber. The emissions from the hydrator are the PM comprised of lime and hydrated lime.

Operations that prepare the feed materials and fuels for the kiln and process the lime product for shipment or further on-site use are found throughout a lime manufacturing plant. The equipment includes grinding mills, crushers, storage bins, conveying systems (such as bucket elevator, belt conveyors), bagging systems, bulk loading or unloading systems, and screening operations. The emissions from these operations include limestone and lime dust (PM) and the trace metallic HAP found in the dust.

II. Summary of Proposed Rule

A. What Lime Manufacturing Plants Are Subject to the Proposed Rule?

The proposed rule would regulate HAP emissions from all new and existing lime manufacturing plants that are major sources, co-located with major sources, or are part of major sources. However, lime manufacturing plants located at pulp and paper mills or at beet sugar factories would not be subject to the proposed rule. Other captive lime manufacturing plants, such as (but not limited to) those at steel mills and magnesia production facilities, would be subject to the proposed rule. We define a lime manufacturing plant as any plant which uses a lime kiln to produce lime product from limestone or other calcareous material by calcination. Lime product means the product of the lime kiln calcination process including calcitic lime, dolomitic lime, and dead-burned dolomite.

B. What Emission Units at a Lime Manufacturing Plant Are Included Under the Definition of Affected Source?

The proposed rule would include the following emission units under the definition of affected source: Lime kilns and coolers, and MPO associated with limestone feed preparation (beginning with the raw material storage bin). The individual types of MPO that would be included under the definition of affected source are grinding mills, raw material storage bins, conveying system transfer points, bulk loading or unloading systems, screening operations, bucket elevators, and belt conveyors—if they follow the raw material storage bin in the sequence of MPO. The MPO associated with lime products (such as quicklime and hydrated lime), lime kiln dust handling, quarry or mining operations, and fuels would not be subject to today's proposed rule. The MPO are further distinguished in the proposed rule as follows: (1) Whether their emissions are vented through a stack, (2) whether their emissions are fugitive emissions, (3) whether their emissions are vented through a stack with some fugitive emissions from the partial enclosure, and/or (4) whether the source is enclosed in a building. Finally, lime hydrators would not be included under the definition of affected source under the proposed NESHAP.

C. What Pollutants Are Regulated by the Proposed Rule?

The proposed rule would establish PM emission limits for lime kilns, coolers, and MPO with stacks.

Particulate matter would be measured solely as a surrogate for the non-volatile and semi-volatile metal HAP. (Particulate matter of course is not itself a HAP, but is a typical and permissible surrogate for HAP metals. See *National Lime Ass'n* v. *EPA,* 233 F. 3d 625, 637–40 (D.C. Cir., 2000).) The proposed rule also would regulate opacity or visible emissions from most of the MPO, with opacity also serving as a surrogate for non-volatile and semi-volatile HAP metals.

D. What Are the Emission Limits and Operating Limits?

1. Emission Limits

The PM emission limit for all of the kilns and coolers at an existing lime manufacturing plant would be 0.12 pounds (lb) PM per ton (0.06 kilogram (kg) per Mg) of stone feed. The PM emission limit for all of the kilns and lime coolers at a new lime manufacturing plant would be 0.10 lb/ton of stone feed. These emission limits would apply to the combined emissions of all the kilns and coolers (assuming the cooler(s) has a separate exhaust vent to the atmosphere) at the lime manufacturing plant. In other words, the sum of the PM emission rates from all of the kilns and coolers at the existing lime manufacturing plant, divided by the sum of the production rates of the kilns at the existing lime manufacturing plant, would be used to determine compliance with the emission limit for kilns and coolers at an existing lime manufacturing plant. Similarly, the sum of the PM emission rates from all of the kilns and coolers, divided by the sum of the production of the kilns at a new plant, would be used to determine compliance with the emission limit for kilns and coolers at a new lime manufacturing plant.

Emissions from MPO that are vented through a stack would be subject to a standard of 0.05 grams PM per dry standard cubic meter (g/dscm) and 7 percent opacity. Stack emissions from MPO that are controlled by wet scrubbers would be subject to the 0.05 grams PM per dry standard cubic meter PM limit but not subject to the opacity limit. Fugitive emissions from MPO would be subject to a 10 percent opacity limit.

We are proposing that for each building enclosing any materials processing operation, each of the affected MPO in the building would have to comply individually with the applicable PM and opacity emission limitations discussed above. Otherwise, we propose that there must be no visible emissions from the building, except from a vent, and the building's vent emissions must not exceed 0.05 grams PM per dry standard cubic meter and 7 percent opacity. We are proposing that for each fabric filter (FF) that controls emissions from only an individual, enclosed storage bin, the opacity emissions must not exceed 7 percent. For each set of multiple storage bins with combined stack emissions, emissions must not exceed 0.05 grams PM per dry standard cubic meter and 7 percent opacity.

2. Operating Limits

For lime kilns that use a wet scrubber PM control device, you would be required to maintain the 3-hour rolling average gas stream pressure drop across the scrubber and the 3-hour rolling average scrubber liquid flow rate equal to or above the levels for the parameters that were established during the PM performance test.

For lime kilns that use a FF PM control device, you would be required to maintain and operate the FF such that the bag leak detection system (BLDS) alarm is not activated and alarm condition does not exist for more than 5 percent of the operating time in each 6-month period. The BLDS must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

For lime kilns that use an electrostatic precipitator (ESP) PM control device, you would be required to maintain the 3-hour rolling average current and voltage input to each electrical field of the ESP equal to or above the operating limits for these parameters that were established during the PM performance test. In lieu of complying with these ESP operating parameters, we are giving sources the option of monitoring PM levels with a PM detector in a manner similar to the procedures for monitoring PM from a FF using a BLDS. You would need to maintain and operate the ESP such that the PM detector alarm is not activated, and alarm condition does not exist for more than 5 percent of the operating time in each 6-month period.

In lieu of using a bag leak detector, PM detector, or monitoring ESP operating parameters for lime kilns with a FF or ESP control device, we are providing the option of monitoring opacity (as an operating limit) with a continuous opacity monitoring system (COMS). Sources that choose to use a COMS would be required to install and operate the COMS in accordance with Performance Specification 1 (PS–1), 40 CFR part 60, Appendix B, and maintain the opacity level of the lime kiln exhaust at or below 15 percent for each 6-minute block period.

For MPO subject to a PM emission limit and controlled by a wet scrubber, you would be required to collect and record the exhaust gas stream pressure drop across the scrubber and the scrubber liquid flow rate during the PM performance test. You would be required to maintain the 3-hour rolling average gas stream pressure drop across the scrubber and the 3-hour rolling average scrubber liquid flow rate equal to or above the levels for the parameters that were established during the PM performance test.

You would be required to prepare a written operations, maintenance, and monitoring plan to cover all affected emission units. The plan would include procedures for proper operation and maintenance of each emission unit and its air pollution control device(s); procedures for monitoring and proper operation of monitoring systems in order to meet the emission limits and operating limits; and standard procedures for the use of a BLDS and PM detector, and any corrective actions to be taken when operating limits are deviated from, or when required in using a PM detector or BLDS.

E. When Must I Comply With the Proposed Rule?

The compliance date for existing lime manufacturing plants would be [Date 3 years from the date a final rule is published in the **Federal Register**]. (Three years may be needed to install new, or retrofit existing, air pollution control equipment.) The date the final rule is published in the **Federal Register** is called the effective date of the rule. We are proposing that emission units at a new lime manufacturing plant (*i.e.*, emission units for which construction or reconstruction commences after today's date) must be in compliance upon initial startup or the effective date of the rule, whichever is later.

F. How Do I Demonstrate Initial Compliance With the Proposed Rule?

1. Kiln and Coolers

For the kiln and cooler PM emission limit, we are proposing that you must conduct a PM emissions test on the exhaust of each kiln at the lime manufacturing plant and measure the stone feed rate to each kiln during the test. The sum of the emissions from all the kilns at the existing lime manufacturing plant, divided by the sum of the average stone feed rates to each kiln at the existing lime manufacturing plant, must not exceed the emission limit of 0.12 lb PM/ton

stone feed; similarly, the sum of the emissions from all the kilns at a new lime manufacturing plant, divided by the sum of the average stone feed rates to each kiln at the new lime manufacturing plant, must not exceed the emission limit of 0.10 lb PM/ton stone feed. If you have a lime cooler(s) that has a separate exhaust to the atmosphere, you would be required to conduct a PM test on the cooler's exhaust concurrently with the kiln PM test. Then the sum of the emissions from all the kilns and coolers at the existing lime manufacturing plant, divided by the sum of the average stone feed rates to each kiln at the existing plant, must not exceed the emission limit of 0.12 lb PM/ton stone feed (or 0.10 lb/ton of stone feed for kilns/coolers at new lime manufacturing plants). For kilns with an ESP or wet scrubber, you would be required to collect and record the applicable operating parameters during the PM performance test and then establish the operating limits based on those data.

2. Materials Processing Operations

For the MPO with stacks and subject to PM emission limits, you would be required to conduct a PM emissions test on each stack exhaust, and the stack emissions must not exceed the emission limit of 0.05 g/dscm. For the MPO with stack opacity limits, you would be required to conduct a 3-hour Method 9 test on the exhaust, and each of the 30 consecutive, 6-minute opacity averages must not exceed 7 percent. The MPO that are controlled by wet scrubbers would not have an opacity limit, but you would be required to collect and record the wet scrubber operating parameters during the PM performance test and then establish the applicable operating limits based on those data.

For MPO with fugitive emissions, you would be required to conduct a Method 9 test, and each of the consecutive 6-minute opacity averages must not exceed the applicable opacity limit. These Method 9 tests are for 3 hours, but the test duration may be reduced to 1 hour if certain criteria are met. Lastly, Method 9 tests or visible emissions checks may be performed on MPO inside of buildings, but additional lighting, improved access to equipment, and temporary installation of contrasting backgrounds may be needed. For additional guidance, see page 116 from the ''Regulatory and Inspection Manual for Nonmetallic Minerals Processing Plants,'' EPA report 305–B–97–008, November 1997.

G. How Do I Continuously or Periodically Demonstrate Compliance With the Proposed Rule?

1. General

You would be required to install, operate, and maintain each required continuous parameter monitoring system (CPMS) such that the CPMS completes a minimum of one cycle of operation for each successive 15-minute period. The CPMS would be required to have valid data from at least three of four equally spaced data values for that hour from a CPMS that is not out of control according to your operation, maintenance, and monitoring plan. To calculate the average for each 3-hour averaging period, you must have at least two of three of the hourly averages for that period using only hourly average values that are based on valid data (i.e., not from out-of-control periods). The 3-hour rolling average value for each operating parameter would be calculated as the average of each set of three successive 1-hour average values. The 3-hour rolling average would be updated each hour. Thus the 3-hour average rolls at 1-hour increments, *i.e.*, once a 1-hour average has been determined based on at least four successive available 15-minute averages, a new 1-hour average would be determined based on the next four successive available 15-minute averages.

You would be required to develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the general provisions in 40 CFR 63.6(e)(3).

2. Kilns and Coolers

For kilns controlled by a wet scrubber, you would be required to maintain the 3-hour rolling average of the exhaust gas stream pressure drop across the wet scrubber greater than or equal to the pressure drop operating limit established during the most recent PM performance test. You would be required to also maintain the 3-hour rolling average of the scrubbing liquid flow rate greater than or equal to the flow rate operating limit established during the most recent performance test.

For kilns controlled by an ESP, if you choose to monitor ESP operating parameters rather than use a PM detector or a COMS, you would be required to maintain the 3-hour rolling average current and voltage input to each electrical field of the ESP greater than or equal to the average current and voltage input to each field of the ESP established during the most recent performance test.

Sources opting to monitor PM emissions from an ESP with a PM detector in lieu of monitoring ESP parameters or opacity would be required to maintain and operate the ESP such that the PM detector alarm is not activated, and alarm condition does not exist for more than 5 percent of the operating time in a 6-month period. Each time the alarm sounds and the owner or operator initiates corrective actions (per the operations and maintenance plan) within 1 hour of the alarm, 1 hour of alarm time will be counted. If inspection of the ESP demonstrates that no corrective actions are necessary, no alarm time will be counted. The sensor on the PM detection system would provide an output of relative PM emissions. The PM detection system would have an alarm that would sound automatically when it detects an increase in relative PM emissions greater than a preset level. The PM detection systems would be required to be installed, operated, adjusted, and maintained so that they follow the manufacturer's written specifications and recommendations.

For kilns and lime coolers (if the cooler has a separate exhaust to the atmosphere) controlled by a FF and monitored with a BLDS, you would be required to maintain and operate the FF such that the BLDS alarm is not activated, and alarm condition does not exist for more than 5 percent of the operating time in a 6-month period. Each time the alarm sounds and the owner or operator initiates corrective actions (per the operations, maintenance, and monitoring plan) within 1 hour of the alarm, 1 hour of alarm time will be counted. If inspection of the FF demonstrates that no corrective actions are necessary, no alarm time will be counted. The sensor on the BLDS would be required to provide an output of relative PM emissions. The BLDS would be required to have an alarm that will sound automatically when it detects an increase in relative PM emissions greater than a preset level. The BLDS would be required to be installed, operated, adjusted, and maintained so that they follow the manufacturer's written specifications and recommendations. Standard operating procedures for the BLDS and PM detection systems would need to be incorporated into the operations, maintenance, and monitoring plan. We recommend that for electrodynamic (or other similar technology) BLDS, the standard operating procedures include concepts from EPA's ''Fabric Filter Bag Leak Detection Guidance'' (EPA–454/R–98–015, September 1997). This

document may be found on the world wide web at *www.epa.gov/ttn/emc.*

For kilns and lime coolers monitored with a COMS, you would be required to maintain each 6-minute block average opacity level at or below 15 percent opacity. The COMS must be installed and operated in accordance with Performance Specification 1 (PS–1), 40 CFR part 60, Appendix B.

3. Materials Processing Operations

For stack emissions from MPO which are controlled by a wet scrubber, you would be required to maintain the 3-hour rolling average exhaust gas stream pressure drop across the wet scrubber greater than or equal to the pressure drop operating limit established during the most recent PM performance test. You would be required to also maintain the 3-hour rolling average scrubbing liquid flow rate greater than or equal to the flow rate operating limit established during the most recent performance test.

For MPO subject to opacity limitations and which do not use a wet scrubber control device, you would be required to periodically demonstrate compliance as follows. You would be required to conduct a monthly 1-minute visible emissions check of each emissions unit under the affected source definition. If no visible emissions are observed in six consecutive monthly tests for any emission unit, you may decrease the frequency of testing from monthly to semiannually for that emissions unit. If visible emissions are observed during any semiannual test, you would be required to resume testing of that emissions unit on a monthly basis and maintain that schedule until no visible emissions are observed in six consecutive monthly tests. If no visible emissions are observed during the semiannual test for any emissions unit, you may decrease the frequency of testing from semiannually to annually for that emissions unit. If visible emissions are observed during any annual test, you would be required to resume visible emissions testing of that emissions unit on a monthly basis and maintain that schedule until no visible emissions are observed in six consecutive monthly tests.

If visible emissions are observed during any visible emissions check, you would be required to conduct a 6-minute test of opacity in accordance with Method 9 of appendix A to part 60 of this chapter. The Method 9 test would be required to begin within 1 hour of any observation of visible emissions, and the 6-minute opacity reading would be required to not exceed the applicable opacity limit. We request comment on using more frequent visible emissions checks for MPO, such as going from monthly to quarterly, and then continuing with semiannual checks.

H. How Do I Determine if My Lime Manufacturing Plant Is a Major Source and Thus Subject to the Proposed Rule?

The proposed rule would apply to lime manufacturing plants that are major sources, co-located with major sources, or are part of major sources. Each lime facility owner/operator would need to determine whether its plant is a major or area source, since this determines whether the lime manufacturing plant would be an affected source under the proposed rule. Section 112 of the CAA defines a major source as a ''stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons/yr or more of any HAP or 25 tons/yr or more of any combination of HAP.'' This definition may be interpreted to imply that the CAA requires an estimate of the facility's potential to emit all HAP from all emission sources in making a determination of whether the source is major or area. However, based on our data analysis, HCl is most likely the HAP that would account for the largest quantity of HAP emissions from a lime manufacturing plant. Although lime manufacturing plants emit HAP metals from most of the emission units at the plant site and organic HAP from the kiln, our analysis indicates that most likely the metal and organic HAP emissions would each be below the 10/25 tons/yr criteria. One potential approach to estimating HAP metals emissions from a lime manufacturing plant is to require measurement of the PM emissions from all of the emission units at the plant and then allow the use of a ratio (which we would specify in the final rule) of HAP metals to PM to calculate the metals emissions. We request comment on this approach to estimating HAP metals emissions. And although we are not proposing to require sources to test for all HAP to make a determination of whether the lime manufacturing plant is a major or area source, we do request comment on whether emissions testing of metal and/or organic HAP should be required for an owner or operator to claim that its lime manufacturing plant is an area source.

We are proposing, however, to require that a source measure HCl emissions from the kiln(s) in order for it to claim it is an area source (provided HCl is emitted at less than 10 tons/yr). Due to the known problems with EPA Method 26 (which may have positive biases attributable to chloride salts rather than to HCl, and negative biases due to condensation and removal of HCl on the filter and/or in the sampling probe), we have decided that Methods 26 and 26A may not be used to measure HCl in the determination whether the source is an area source. We, in fact, adopted this same approach in the final NESHAP for the portland cement industry. See 40 CFR part 63, subpart LLL, and 64 FR 31907 and 31920 (June 14, 1998).

In addition, we worked with the American Society of Testing and Materials (ASTM), in conjunction with the National Lime Association (NLA), to develop an impinger-based method for the measurement of HCl based on Method 26 but which includes changes to the method to overcome the aforementioned biases. This ASTM HCl impinger-based method has been demonstrated on lime kilns and has been designated as ASTM Test Method D 6735–01. We approve of this method, and we propose to allow owners/operators to use it to measure HCl from lime kilns to determine whether their lime manufacturing plant is a major or area source. But because it is very important to obtain an accurate measurement of HCl emissions, we are proposing to require the paired-train option under section 11.2.6 of the method, and we are also proposing to require the post-test analyte spike option under section 11.2.7 of the method. Although we believe these additional quality assurance procedures are critical to obtain an accurate measurement of HCl, we seek comment on the appropriateness of requiring them.

We attempted to utilize proposed EPA Method 322 (based on gas filter correlation infrared spectroscopy) to gather HCl data from lime kilns and encountered technical problems. These problems included inadequate data availability, spike recovery, and response time, which led to our decision in the promulgation of the NESHAP for the portland cement industry to not finalize EPA Method 322. Today, we are affirming that decision and propose that Method 322 may not be used to measure HCl in the determination whether a lime manufacturing plant is an area source.

Based on the aforementioned difficulties with Method 26 and proposed Method 322, we propose that the test methods based on fourier transform infrared (FTIR) spectroscopy, EPA Methods 320 and 321, will be acceptable for measuring HCl from lime kilns if the owner/operator wishes to

claim its lime manufacturing facility is not a major source. These FTIR methods were finalized along with the portland cement industry NESHAP, and this requirement would be consistent with those NESHAP. (As mentioned above, we are also proposing to allow sources to use ASTM Test Method D 6735–01 for the measurement of HCl to determine whether their lime manufacturing plant is a major or area source.)

However, we acknowledge the NLA's concerns about the use of FTIR during the lime kiln test program. In letters the NLA sent to us, they suggested that in light of the alleged problems experienced by our test contractors in using FTIR, we should allow the use of Method 26 for measurement of HCl emissions from lime kilns. However, we do not completely agree with their assessment of the asserted difficulties we experienced with FTIR. Our response to NLA's concerns about FTIR may be found in the docket to the proposed rule. And despite any alleged problems with FTIR, we do not consider them to justify the use of Method 26 until the aforementioned problems with Method 26 can be resolved.

III. Rationale for Proposed Rule

A. How Did We Determine the Source Category To Regulate?

Section 112(c) of the CAA directs the Agency to list each category of major sources that emits one or more of the HAP listed in section 112(b) of the CAA. We published an initial list of source categories on July 16, 1992 (57 FR 31576). ''Lime Manufacturing'' is one of the 174 categories of major sources on the initial list. As defined in our report, ''Documentation for Developing the Initial Source Category List'' (EPA–450/3–91–030, July 1992), the lime manufacturing source category includes any facility engaged in the production of high calcium lime, dolomitic lime, and dead-burned dolomite. These are the same applicable lime products as defined in the new source performance standard (NSPS) for lime manufacturing plants (40 CFR part 60, subpart HH) and in the proposed rule.

According to the background document for the initial source category listing, the listing of lime manufacturing as a major source category was based on the Administrator's determination that some lime manufacturing plants would be major sources of chlorine and metal HAP including, but not limited to, compounds of arsenic, cadmium, chromium, lead, manganese, mercury, nickel, and selenium. In addition, the results of emissions testing we conducted in the development of the proposed rule indicate that many lime manufacturing plants may be major sources of HCl. Hydrogen chloride emissions from these lime kiln tests using EPA Method 320 ranged from 0.007 to 2.0 lbs HCl per ton of lime produced. Assuming an average HCl emission factor of 0.4 lb/ton, a lime manufacturing plant would only have to produce 50,000 tons of lime per year (which is a small lime manufacturing plant) for it to be a major source (for this reason alone).

The proposed rule would regulate HAP emissions from all new and existing lime manufacturing plants that are major sources, co-located with major sources, or are part of major sources (e.g., steel production facilities). One exception to this is that lime manufacturing operations located at pulp and paper mills would not be subject to the proposed rule. Lime manufacturing operations at pulp and paper mills would be subject to the NESHAP for combustion sources at kraft, soda, and sulfite pulp and paper mills. See 66 FR 3180, January 12, 2001.

Lime manufacturing operations at beet sugar processing plants would also not be subject to the NESHAP. Both the lime product and carbon dioxide in the beet sugar lime kiln exhaust are used in the beet sugar manufacturing process. Beet sugar lime kiln exhaust is typically routed through a series of gas washers to clean the exhaust gas prior to process use. The clean, cooled gas is then added to one or more carbonation units (which contain a mixture of beet juice, lime, and water) to provide the carbon dioxide necessary for carbonation and precipitation of lime, which purifies the beet sugar juice. Although the carbonation units are part of the sugar manufacturing process, they would provide additional cleaning of the lime kiln exhaust. Beet sugar plants typically operate only seasonally, and our analysis indicates that beet sugar plants are not major sources of HAP.

B. How Did We Determine the Affected Source?

The proposed rule would define the affected source as the lime manufacturing plant, and would include all of the limestone MPO at a lime manufacturing plant, beginning with the raw material storage bin, and all of the lime kilns and coolers at the lime manufacturing plant. This definition of affected source conforms with the General Provisions 40 CFR 63.2 definition, which essentially states that all emission units at a plant are to be considered as one affected source.

A new lime manufacturing plant is defined as the collection of any limestone MPO, beginning with the raw material storage bin, and any lime kiln or cooler for which construction or reconstruction begins after December 20, 2002. Thus, it is possible for an existing lime manufacturing plant and a new lime manufacturing plant to be located at the same site. This definition of new affected source includes the same emission units as the existing affected source, except that the new affected source only includes those emission units for which construction or reconstruction begins after December 20, 2002. The definitions are different because the MACT PM emission limit for kilns and coolers at a new lime manufacturing plant is more stringent than for those at an existing lime manufacturing plant.

In general, the emission units which are included in the definition of new or existing affected source were selected based on regulatory history (*e.g.*, the applicability of NSPS and the information included in the initial source category listing) and to be consistent with other MACT standards (*e.g.*, the MACT standards for the portland cement industry).

Although lime coolers were not among the list of emission units in the background document for the initial source category listing for lime manufacturing, lime coolers would be an emission unit under the definition of affected source in the proposed rule. All lime coolers are integrated with their associated kiln such that most coolers vent all of their exhaust (if there is an exhaust stream) to the kiln, although a few lime coolers (*e.g.*, grate coolers) also vent a portion of their exhaust separately to the atmosphere.

The specific MPO which are included in the affected source definition include the following emission units: all of the grinding mills, raw material storage bins, conveying system transfer points, bulk loading or unloading systems, screening operations, bucket elevators, and belt conveyors, beginning with the raw material storage bin and up to the kiln. We define MPO to include these emission units under the proposed subpart because these units are also subject to the NSPS for Nonmetallic Minerals Processing Plants (referred to in this preamble as the NSPS subpart OOO). We specifically solicit comment on whether raw material storage piles should be included in the affected source definition.

In today's proposed rule, the first emission unit in the sequence of MPO which is included in the definition of affected source would be the raw

material storage bin. Furthermore, the first conveyor transfer point included under the affected source definition would be the transfer point associated with the conveyor transferring material from the raw material storage bin. This demarcation in the sequence of MPO which defines the first emission unit under the affected source definition is consistent with the applicability requirements under the NESHAP for the portland cement industry, 40 CFR part 63, subpart LLL.

The MPO emission units that would be excluded from the affected source definition are described as follows. Any MPO which precedes the raw material storage bin, such as those in quarry or mine operations, is not included in the definition of affected source. Any operations that process only lime product, lime kiln dust, or fuel would be excluded from the definition. Truck dumping into any screening operation, feed hopper, or crusher would not be included among the emission units considered under the affected source definition. (These exclusions are consistent with the NSPS subpart OOO). Finally, lime hydrators would not be included as an emission unit under the affected source definition since all hydrators are controlled by integrated wet scrubbers, which capture the lime PM (and associated trace metallic HAP) and recycle the scrubber water. Additionally, this is consistent with the NSPS subpart HH, which does not apply to lime hydrators.

C. How Did We Determine Which Pollutants To Regulate?

The proposed rule would reduce emissions of non-volatile and semi-volatile metal HAP by limiting emissions of PM from the kiln and cooler, and certain MPO emission units. Particulate matter is a surrogate for the non-volatile and semi-volatile metal HAP that are always a subset of PM. Controlling PM emissions will control the non-volatile and semi-volatile metal HAP, since these compounds are associated with the PM, *i.e.*, they are by definition in the particulate phase (as opposed to the gaseous form). The available air pollution controls for the particulate HAP metals at lime manufacturing plants are the PM controls used at lime manufacturing plants, *i.e.*, FF, ESP, and wet scrubbers. These at-the-stack controls capture non-volatile and semi-volatile HAP metals non-preferentially along with other PM, thus showing why PM is a permissible indicator for these HAP metals. See *National Lime Ass'n* v. *EPA,* 233 F. 3d at 639. Also, using PM as a surrogate for the HAP metals would reduce the cost of emissions testing and monitoring that would be required to demonstrate compliance with the otherwise numerous standards that would apply to individual HAP metals. In addition, several other NESHAP have been promulgated which use PM as a surrogate for non-volatile and semi-volatile HAP metals for the same reason—it is a technically sound surrogate since HAP metals are necessarily contained in PM, are controlled by PM control devices to roughly the same efficiency, and there are significant associated cost savings due to monitoring for one parameter instead of many.

The proposed rule would limit opacity or visible emissions from certain MPO emission units. Opacity serves as a surrogate for the non-volatile and semi-volatile HAP metals. Opacity is indicative of PM emission levels and, thus, for the same reasons that PM is a surrogate for the particulate HAP metals, opacity would also be a surrogate for the PM HAP metals. Further, opacity levels are reduced by reducing PM emissions, which would also reduce the metal HAP in the particulate phase, *i.e.*, the non-volatile and semi-volatile HAP.

We are proposing not to regulate HCl emissions from lime kilns. Under the authority of section 112(d)(4) of the CAA, we have determined that no further control is necessary because HCl is a ''health threshold pollutant,'' and HCl levels emitted from lime kilns are below the threshold value within an ample margin of safety. The following explains the statutory basis for considering health thresholds when establishing standards, and the basis for today's proposed decision, including a discussion of the risk assessment conducted to support the ample margin of safety decision.

Section 112 of the CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. Of relevance here, section 112(d)(4) allows us to develop risk-based standards for HAP ''for which a health threshold has been established'' provided that the standards achieve an ''ample margin of safety.'' Therefore, we believe we have the discretion under section 112(d)(4) to develop standards which may be less stringent than the corresponding floor-based MACT standards for some categories emitting threshold pollutants.

In deciding standards for this source category, we seek to assure that emissions from every source in the category result in exposures less than the threshold level even for an individual exposed at the upper end of the exposure distribution. The upper end of the exposure distribution is calculated using the ''high end exposure estimate,'' defined as a plausible estimate of individual exposure for those persons at the upper end of the exposure distribution, conceptually above the 90th percentile, but not higher than the individual in the population who has the highest exposure. We believe that assuring protection to persons at the upper end of the exposure distribution is consistent with the ''ample margin of safety'' requirement in section 112(d)(4).

We emphasize that the use of section 112(d)(4) authority is wholly discretionary. As the legislative history indicates, cases may arise in which other considerations dictate that we should not invoke this authority to establish less stringent standards, despite the existence of a health effects threshold that is not jeopardized. For instance, we do not anticipate that we would set less stringent standards where evidence indicates a threat of significant or widespread environmental effects taking into consideration cost, energy safety and other relevant factors, although it may be shown that emissions from a particular source category do not approach or exceed a level requisite to protect public health with an ample margin of safety. We may also elect not to set less stringent standards where the estimated health threshold for a contaminant is subject to large uncertainty. Thus, in considering appropriate uses of our discretionary authority under section 112(d)(4), we consider other factors in addition to health thresholds, including uncertainty and potential ''adverse environmental effects,'' as that phrase is defined in section 112(a)(7) of the CAA.

We are proposing in today's notice not to develop standards for HCl from lime kilns. This decision is based on the following. First, we consider HCl to be a threshold pollutant. Second, we have defined threshold values in the form of an Inhalation Reference Concentration (RfC) and acute exposure guideline level (AEGL). Third, HCl is emitted from lime kilns in quantities that result in human exposure in the ambient air at levels well below the threshold values with an ample margin of safety. Finally, there are no adverse environmental effects associated with HCl. The bases and supporting rationale for these conclusions are as follows.

For the purposes of section 112(d)(4), several factors are considered in our decision on whether a pollutant should be categorized as a health threshold pollutant. These factors include evidence and classification of

carcinogenic risk and evidence of noncarcinogenic effects. For a detailed discussion of factors that we consider in deciding whether a pollutant should be categorized as a health threshold pollutant, please see the April 15, 1998 **Federal Register** document (63 FR 18766).

In the April 15, 1998 action cited above, we determined that HCl, a Group D pollutant, is a health threshold pollutant for the purpose of section 112(d)(4) of the CAA (63 FR 18753).

The NLA conducted a risk assessment to determine whether the emissions of HCl from lime kilns at the current baseline levels resulted in exposures below the threshold values for HCl. We reviewed the risk assessment report prepared by the NLA and believe that it uses a reasonable and conservative methodology, is consistent with EPA methodology and practice, and reaches a reasonable conclusion that current levels of HCl emissions from lime kilns would be well under the threshold level of concern for human receptors. The summary of the NLA's assessment is organized as follows: (1) Hazard identification and dose-response assessment, (2) emissions and release information, and (3) exposure assessment.

It is important to note that the risk assessment methodology applied here by NLA should not be interpreted as a standardized approach that sets a precedent for how EPA will analyze application of section 112(d)(4) in other cases. The approach presented here, including assumptions and models, was selected to meet the unique needs of this particular case, to provide the appropriate level of detail and margin of safety given the data availability, chemicals, and emissions particular to this category.

The RfC is a ''long-term'' threshold, defined as an estimate of a daily inhalation exposure that, over a lifetime, would not likely result in the occurrence of significant noncancer health effects in humans. We have determined that the RfC for HCl of 20 micrograms per cubic meter ($\mu g/m^3$) is an appropriate threshold value for assessing risk to humans associated with exposure to HCl through inhalation (63 FR 18766, April 15, 1998). Therefore, the NLA used this RfC as the threshold value in their exposure assessment for HCl emitted from lime kilns.

In addition to the effects of long-term inhalation of HCl, the NLA, at our request, also considered thresholds for short-term exposure to HCl in this assessment. The AEGL toxicity values are estimates of adverse health effects due to a single exposure lasting 8 hours or less. The confidence in the AEGL (a qualitative rating or either low, medium, or high) is based on the number of studies available and the quality of the data. Consensus toxicity values for effects of acute exposures have been developed by several different organizations, and we are beginning to develop such values. A national advisory committee organized by the EPA has developed AEGL for priority chemicals for 30-minute, 1-hour, 4-hour, and 8-hour airborne exposures. They have also determined the levels of these chemicals at each exposure duration that will protect against discomfort (AEGL1), serious effects (AEGL2), and life-threatening effects or death (AEGL3). The NLA used the AEGL1 value as the threshold value for assessing the inhalation health effects of short-term exposures to HCl.

The NLA conducted dispersion modeling for 71 lime plants and nearly 200 lime kilns, representing all operating captive and commercial lime plants in the U.S. that would potentially be subject to the proposed rule. The analyses performed assumed worst case operating scenarios, such as maximum production rate and 24 hours per day, 365 days per year operation. Hydrogen chloride emission rates were based on either measured data or default HCl stack concentrations. For plants having HCl measurement data, only HCl data collected using FTIR were used. For plants where no emissions data were available, the following HCl emission levels were assumed for the analyses: 10 parts per million by volume (ppmv) for kilns with either scrubbers or preheaters, 18 ppmv for kilns at Riverton Corporation, 26 ppmv for gas-fired kilns, and 85 ppmv for all other kilns. (The Riverton emission level was derived by multiplying its stack test results obtained using EPA Method 26 by a sampling method bias factor of 25. Method 26 may understate actual HCl emissions by a factor of between 2 and 25.) The HCl emission levels were converted to stack emission rates using the stack gas volumetric flow rate.

The release characteristics used for the dispersion model included stack height, stack diameter, exit temperature, and exit velocity. Using its own questionnaire, the NLA collected the necessary release information from all 71 plants. The exposure assessment was conducted for HCl emissions from all lime plants in the source category. As discussed above, the emissions data and release characteristics were used as inputs to the assessment. The approach taken by NLA was found to be consistent with the EPA's tiered methodology. (See the U.S. EPA report ''Screening Procedures for Estimating the Air Quality Impact of Stationary Sources (revised)'', report number EPA–454/R–92–019 (1992).) The approach for each of the facilities involved four steps: Step 1 was the modeling of HCl concentrations at the point of maximum concentration, whether occurring on-site or off-site, using SCREEN3, a screening-level air dispersion model. Step 2 was the same as Step 1, but modeling was performed at or beyond the fence line. Step 3 was the same as Step 1, but modeling was performed at the nearest off-site residence or business location. Step 4 was the modeling of HCl concentrations at the nearest residence or business location using the ISC–PRIME model. (ISC–PRIME is a steady-state Gaussian plume model based on the ISC3 dispersion model, with the Plume RIse Model Enhancements (PRIME) algorithm added for improved treatment of building downwash. The model can account for settling and dry deposition; building downwash; area, line, and volume sources; plume rise as a function of downwind distance; building dimensions and stack placement relative to a building; separation of point sources; and limited terrain adjustment.) Note that each succeeding step involves more refined site-specific data and less conservative assumptions.

The analyses performed under each of the above steps assumed worst case operating scenarios, such as maximum production rate, and in Steps 1 through 3 worst case meteorology. Local terrain and building downwash effects were also considered, and meteorological data were taken from the nearest National Weather Service meteorological station. Maximum one hour averages were converted to annual averages using a conversion factor of 0.08, consistent with EPA recommendations.

The NLA generated estimates of both chronic (annual average) and acute (one-hour) concentrations for comparison to the relevant health reference values or threshold levels. Acute and chronic exposures were compared to the AEGL1 of 2,700 $\mu g/m^3$ for one-hour exposures and the RfC of 20 $\mu g/m^3$ for long-term continuous exposure, respectively.

Noncancer risk assessments typically use a metric called the Hazard Quotient (HQ) to assess risks of exposures to noncarcinogens. The HQ is the ratio of exposure (or modeled concentration) to the health reference value or threshold level (*i.e.*, RfC or AEGL). HQ values less than ''1'' indicate that exposures are below the health reference value or threshold level and are likely to be

without appreciable risk of adverse effects in the exposed population. HQ values above ''1'' do not necessarily imply that adverse effects will occur, but that the potential for risk of such effects increases as HQ values exceed ''1.'' In addition, when information on background levels of pollutants is not available, EPA has in some cases considered a HQ of 0.2 or below to be acceptable.

For the NLA assessment, if the HQ was found to be less than 0.5 for any of the first three steps using conservative defaults and modeling assumptions, the analysis concluded with that step. On the other hand, if the HQ exceeded 0.5, work proceeded to subsequent steps. There were no facilities where Step 4 (*i.e.*, the most refined step) yielded an HQ above 0.5. (Steps 1, 2, and 3 are considered ''Tier 2'' analyses under EPA's tiered modeling approach, whereas Step 4 is considered a ''Tier 3'' analysis.)

To help confirm that NLA's approach was reasonable, we decided to reproduce several of NLA's modeling analyses by performing our own analyses for selected facilities having the highest potential for health risk to the surrounding community. Generally, these were facilities having the highest emission rates or facilities where Tier 3 modeling was performed for actual off-site receptor locations. Fourteen kilns with emission rates greater than 5.0 grams/second were evaluated using the SCREEN3 air dispersion model. For the analyses, plant-specific parameters were used for source type, emission rate, stack height, stack inner diameter exit velocity, gas exit temperature, and location (urban versus rural). Assumptions about flat terrain, meteorology, and building dimensions were made, as appropriate. For plants with multiple stacks, emissions were considered to emanate from one co-located emission point. Then, in order to maintain a conservative approach, the lowest effective stack height parameters were utilized for all emissions. The model was run, and maximum concentrations for distances ranging from 100 to 5,000 meters were obtained.

To evaluate acute exposure, the HQ was determined by comparing the maximum concentrations to the HCl acute threshold level of 2,700 $\mu g/m^3$. Maximum concentrations were then converted into annual concentrations, and the HQ was determined by comparing these concentrations to the HCl chronic health reference value of 20 $\mu g/m^3$.

We then used the Human Exposure Model (HEM) to examine seven of the kilns that were modeled by the NLA using ISC–PRIME. Concentrations were predicted at geographically-weighted centers of census blocks. Emissions were assumed to originate from a single stack using the lowest effective stack height reported at each facility. Six of the kilns modeled showed values well below the RfC, the highest having an HQ = 0.11. The seventh indicated an HQ of 0.96. The seventh kiln was re-simulated using site-specific emissions and stack data, resulting in an HQ = 0.21. Overall, we believe that the NLA has taken a reasonably conservative approach in estimating risk due to HCl exposure. This approach is consistent with the methodology and assumptions EPA would have used if the study had been done in-house, and in several instances NLA's approach is even more conservative. Furthermore, EPA conducted a parallel confirmatory analysis and found results consistent with those of the NLA assessment.

At this point, it should be noted that the potential for effects depends on an individual's total exposure to that chemical. As a result, exposure from all sources, not just the one in question, must be evaluated. Where possible, other exposures must be accounted for, either explicitly through monitoring or modeling, or by apportioning a portion of the health threshold level available to any individual source. To estimate the potential exposure from other sources, the NLA reviewed the ambient HCl concentration estimates derived by the air component of EPA's Cumulative Exposure Project (CEP). They found that the mean national HCl concentration corresponded to an HQ of 0.06 and the 95th percentile national HCl concentration corresponded to an HQ of 0.2, and they concluded that background HCl exposures were unlikely to exceed an HQ of 0.2. (These HQ helped confirm that the total HQ for a facility, including contributions from other sources (''background''), would not be expected to exceed ''1.'' However, these background HQ were not actually added into a facility's final HQ estimate.

Thus, we are comfortable with NLA's calculations and feel confident that exposures to HCl emissions from the facilities in question are unlikely to ever exceed an HQ of 0.2. Therefore, we believe that the predicted exposures from these facilities should provide an ample margin of safety to ensure that total exposures for nearby residents should not exceed the short-term or long-term health based threshold levels or health reference values, even when considering the possible contributions of other sources of HCl or similar respiratory irritants.

The standards for emissions must also protect against significant and widespread adverse environmental effects to wildlife, aquatic life, and other natural resources. The NLA did not conduct a formal ecological risk assessment. However, we have reviewed publications in the literature to determine if there would be reasonable expectation for serious or widespread adverse effects to natural resources.

We consider the following aspects of pollutant exposure and effects: Toxicity effects from acute and chronic exposures to expected concentrations around the source (as measured or modeled), persistence in the environment, local and long-range transport, and tendency for bio-magnification with toxic effects manifest at higher trophic levels.

No research has been identified for effects on terrestrial animal species beyond that cited in the development of the HCl RfC. Modeling calculations indicate that there is little likelihood of chronic or widespread exposure to HCl at concentrations above the threshold around lime manufacturing plants. Based on these considerations, we believe that the RfC can reasonably be expected to protect against widespread adverse effects in other animal species as well.

Plants also respond to airborne HCl levels. Chronic exposure to about 600 $\mu g/m^3$ can be expected to result in discernible effects, depending on the plant species. Plants respond differently to HCl as an anhydrous gas than to HCl aerosols. Relative humidity is important in plant response; there appears to be a threshold of relative humidity above which plants will incur twice as much damage at a given dose. Effects include leaf injury and decrease in chlorophyll levels in various species given acute, 20-minute exposures of 6,500 to 27,000 $\mu g/m^3$. A field study reports different sensitivity to damage of foliage in 50 species growing in the vicinity of an anhydrous aluminum chloride manufacturer. American elm, bur oak, eastern white pine, basswood, red ash and several bean species were observed to be most sensitive. Concentrations of HCl in the air were not reported. Chloride ion in whole leaves was 0.2 to 0.5 percent of dry weight; sensitive species showed damage at the lower value, but tolerant species displayed no injury at the higher value. Injury declined with distance from the source with no effects observed beyond 300 meters. Maximum modeled long-term HCl concentrations (less than 10 $\mu g/m^3$) are well below the 600 $\mu g/m^3$ chronic threshold, and the maximum short-term HCl concentration (540 $\mu g/m^3$) is far

below the 6,500 μg/m^3 acute exposure threshold. Therefore, no adverse exposure effects are anticipated.

Prevailing meteorology strongly determines the fate of HCl in the atmosphere. However, HCl is not considered a strongly persistent pollutant, or one where long range transport is important in predicting its ecological effects. In the atmosphere, HCl can be expected to be absorbed into aqueous aerosols, due to its great affinity for water, and removed from the troposphere by rainfall. In addition, HCl will react with hydroxy ions to yield water plus chloride ions. However, the concentration of hydroxy ions in the troposphere is low, so HCl may have a relatively long residence time in areas of low humidity. No studies are reported of HCl levels in ponds or other small water bodies or soils near major sources of HCl emissions. Toxic effects of HCl to aquatic organisms would likely be due to the hydronium ion, or acidity. Aquatic organisms in their natural environments often exhibit a broad range of pH tolerance. Effects of HCl deposition to small water bodies and to soils will primarily depend on the extent of neutralizing by carbonates or other buffering compounds. Chloride ions are essentially ubiquitous in natural waters and soils so minor increases due to deposition of dissolved HCl will have much less effect than the deposited hydronium ions. Deleterious effects of HCl on ponds and soils, where such effects might be found near a major source emitting to the atmosphere, likely will be local rather than widespread, as observed in plant foliage.

Effects of HCl on tissues are generally restricted to those immediately affected and are essentially acidic effects. The rapid solubility of HCl in aqueous media releases hydronium ions, which can be corrosive to tissue when above a threshold concentration. The chloride ions may be concentrated in some plant tissues, but may be distributed throughout the organism, as most organisms have chloride ions in their fluids. Leaves or other tissues exposed to HCl may show some concentration above that of their immediate environment; that is, some degree of bioconcentration can occur. However, long-term storage in specific organs and biomagnification of concentrations of HCl in trophic levels of a food chain would not be expected. Thus, the chemical nature of HCl results in deleterious effects, that when present, are local rather than widespread.

In conclusion, acute and chronic exposures to expected HCl concentrations around the source are not expected to result in adverse toxicity effects. Hydrogen chloride is not persistent in the environment. Effects of HCl on ponds and soils are likely to be local rather than widespread. Finally, HCl is not believed to result in biomagnification or bioaccumulation in the environment. Therefore, we do not anticipate any adverse ecological effects from HCl.

The results of the exposure assessment showed that exposure levels to baseline HCl emissions from lime production facilities are well below the health threshold value. Additionally, the threshold values, for which the RfC and AEGL values were determined to be appropriate values, were not exceeded when considering conservative estimates of exposure resulting from lime kiln emissions as well as considering background exposures to HCl and therefore, represent an ample margin of safety. Furthermore, no significant or widespread adverse environmental effects from HCl is anticipated. Therefore, under authority of section 112(d)(4), we have determined that further control of HCl emissions from lime manufacturing plants is not necessary.

We considered establishing a limit for mercury emissions from lime kilns, but there is no MACT floor for mercury—that is, we know of no way to establish an achievable floor standard for mercury beyond selecting an arbitrarily high emission limit that any source could achieve under any circumstance since no source controls mercury emissions using a means of control that can be duplicated by other sources. We also have initially determined that an emission limit for mercury based on a beyond-the-MACT-floor option is not considered cost effective at this time; nor is a beyond-the-floor standard justified for mercury after otherwise taking into account cost, non-air quality environmental and health impacts, and energy considerations.

D. How Did We Determine the MACT Floor for Emission Units at Existing Lime Manufacturing Plants?

1. PM From the Kiln and Cooler

In establishing the MACT floor, section 112(d)(3)(A) of the CAA directs us to set standards for existing sources that are no less stringent than the average emission limitation achieved in practice by the best performing 12 percent of existing sources (for which there are emissions data) where there are more than 30 sources in the category or subcategory. Among the possible meanings for the word ''average'' as the term is used in the CAA, we considered two of the most common. First, ''average'' could be interpreted as the arithmetic mean. The arithmetic mean of a set of measurements is the sum of the measurements divided by the number of measurements in the set. The word ''average'' could also be interpreted as the median of the emission limitation values. The median is the value in a set of measurements below and above which there are an equal number of values (when the measurements are arranged in order of magnitude). This approach identifies the emission limitation achieved by those sources within the top 12 percent, arranges those emissions limitations achieved in order of magnitude, and the control level achieved by, and achievable by, the median source is selected. Either of these two approaches could be used in developing MACT standards for different source categories.

We obtained PM data for 47 lime kilns over the course of developing the proposed rule. The most comprehensive body of data, and we believe the one that most accurately approximates the performance achieved by, and achievable by, the average of the best 12 percent of existing sources for which the Agency has emission data, are PM limitations contained in State and local agency permits for these sources. We used the permit limitations for the kilns (along with the supporting PM emissions data) in our MACT floor analysis because the permit limitations were indicative of the variability in the long-term performance of the emission controls. We examined multiple sets of PM emissions data obtained from the individual kilns during compliance testing to assure that the permit limitations do not underestimate the pollution control capabilities of these sources (*i.e.*, that actual performance is not superior to the permit limits, in which case the MACT floor would need to be based on that superior performance; see *Sierra Club* v. *EPA,* 167 F. 3d 658, 661–62 (D.C. Cir. 1999)).

Simply taking the average or mean of the lowest 12 percent of the emissions data (without considering permit limitations, *i.e.*, achievability of the technology over the long-term) would not account for the inherent variability of performance of well-designed and operated emission controls, since individual emissions tests are based on short durations of sampling, typically 3 hour tests (because of the absence of PM continuous emissions monitors) and, thus, we would be required to extrapolate these ''snapshot'' data to ascertain long-term achievable performance. Additionally, we obtained multiple compliance test data for the

top performing kilns (where available); some of the kilns' data vary over two orders of magnitude and vary up to their permit limit. Further, these multiple data sets indicate that some of these top performing kilns would not be able to meet an emission limit based on a strictly arithmetic average of the top performing kilns' emissions data (the result being a standard not achieved by the average of the best performing sources, and hence impermissible).

We arrayed the data by permit limitation, from lowest to highest, in units of lbs PM/ton of limestone feed, along with the associated PM emissions test data. The best performing 12 percent of the 47 kilns are the best performing six kilns, with the third and fourth best performing kilns being the median. The six best performing kilns' permit limits for PM are 0.10, 0.12, 0.12, 0.12, 0.21, and 0.21 lb/ton limestone feed and are equipped with either a FF or ESP. The emission test data associated with these kilns indicate that these kilns have indeed achieved the limits in their State permits. The test data for the kilns permitted at or below 0.12 lb PM/ton limestone vary from 0.0091 to 0.0925 lb PM/ton limestone. We do not believe that these kilns could consistently achieve standards which are lower than the permit limitation of 0.12 lb PM/ton limestone level, due to the probable long-term variability. Therefore, we are proposing a MACT floor PM emission limit of 0.12 lb PM/ton limestone for lime kilns at existing lime plants, using the median approach of the permit limits, which the associated emissions data show to be achievable and show as well to be a reasonable approximation of the achievable performance of the average of the best performing 12 percent of kilns for which we have emissions data, taking into consideration long-term variability in performance.

Most lime coolers (approximately 96 percent) in the lime manufacturing industry use ambient air for cooling and are integrated with the kiln such that all the cooler exhaust goes directly to the kiln for use as combustion air, or else the cooling of the lime takes place within the kiln itself (*e.g.*, in vertical kilns). Thus, for 96 percent of the lime kilns, their emissions are actually the kiln and cooler emissions combined. The kiln PM emission limit of 0.12 lb/ton limestone is based on kiln permit limits and associated emissions data where the kiln and cooler emissions are combined. That is, based on our review of the questionnaire responses, discussions with plant personnel, and State permit information, none of the best performing kilns has a lime cooler with a separate exhaust to the atmosphere. Thus, the kiln PM emission limit applies to the emissions from both the kiln and cooler. For the 96 percent of the kilns with no separate cooler exhaust, this would have no effect; that is, the coolers' emissions are already combined with the kiln prior to venting to the atmosphere. For the few kilns with grate coolers that separately vent a portion of the cooler exhaust to the atmosphere, the sum of the emissions from the kiln(s) and the grate cooler exhaust(s) at the existing lime manufacturing plant would be subject to the kiln and cooler emission limit of 0.12 lb PM/ton limestone feed. With this approach, the emissions from the kiln and cooler are subject to one emission limit, regardless of whether the kiln and cooler emissions are combined prior to release to the atmosphere. This reflects the performance achieved by, and achievable by (taking operating variability into account), the median of the 12 percent best performing kilns for which the Agency has emissions data. Further, since we have defined the affected source to include all kilns and coolers at a lime manufacturing plant, the kiln and cooler PM emission limit applies to the combined emissions of PM from all of the kilns and coolers at the existing lime manufacturing plant.

During the review of a draft of this proposal by the Small Business Advocacy Review (SBAR) Panel, an issue was raised about the potential for increases in sulfur dioxide (SO_2) and HCl emissions that may occur if sources opt to remove existing PM wet scrubbers and replace them with dry PM control devices (such as FF or ESP) in order to meet the proposed kiln PM standard. About 20 percent of the lime produced in the U.S. is from kilns equipped with wet scrubbers, and about 90 percent of the wet scrubbers on lime kilns at major source lime plants would not meet the proposed PM limit. And although the proposed rule would not dictate how the lime kiln PM standard would have to be met, and our limited information indicates that one or two lime kilns with wet scrubbers may already meet the proposed PM standard (this may be because they burn natural gas as their primary fuel source), some sources may elect to upgrade their existing wet scrubber with a new venturi wet scrubber to meet the PM standard, while other existing sources that would not meet the proposed PM emission limit with a wet scrubber may opt to replace the wet scrubber with a FF. But because wet scrubbers are more effective than a FF or ESP at removing SO_2 (and HCl), the SBAR Panel was concerned that the latter approach would result in increases in SO_2 emissions from these kilns. Therefore, we request comment on establishing a subcategory because of the potential increase in SO_2 and HCl emissions and other negative environmental impacts (discussed further below) that may result in complying with the proposed PM standard. We note, however, that the risk analysis showed that HCl levels emitted from lime kilns (including the increased HCl levels from kilns with wet scrubbers that are replaced with FF) are below the threshold value within an ample margin of safety.

Although subcategorization normally is based on differences in manufacturing process, emission characteristics, or technical feasibility, and is not justified by the sole fact that a different type of air pollution control equipment is utilized, EPA solicits comment on the possibility of establishing a subcategory for existing lime kilns using wet scrubbers in order to avoid potentially environmentally counterproductive effects due to increased emissions of acid gases and increased water and energy use. (Such a subcategory would also significantly reduce the cost impact on industry.) In addition, we request comment on what the MACT floor PM limit would be for this possible subcategory. If we based the MACT floor for this possible subcategory on an inspection of the permit limit information available to us, we would initially conclude that a PM emission limit of 0.6 lb PM/ton limestone feed may be appropriate. We note, however, that in order to use permit limits as a basis for a MACT floor determination, those permit limits must accurately reflect the actual performance of the sources used as the basis for the MACT floor determination (considering both emission levels and operating variability when designed and operated properly). We, therefore, solicit information both on PM permit limits for wet scrubber equipped kilns and on the actual emissions from those kilns. Lastly, at the recommendation of the SBAR Panel, we specifically request comment on any operational, process, product, or other technical and/or spatial constraints that would preclude installation of a FF or ESP at an existing lime manufacturing plant.

We note, however, that following the SBAR panel, the NLA brought to our attention the fact that if sources replace their wet scrubbers with FF to comply with the kiln PM standard, they would most likely also need to take steps to cool the exhaust gas stream entering the FF, since the operating temperature of a FF may be 400° less than a wet scrubber.

Cooling the gas stream as such may be done using various techniques, all with varying environmental and cost impacts. In light of this new information presented by NLA, we analyzed the costs of three PM control options available to sources with wet scrubbers that do not currently meet the proposed PM limit. Sources could elect to replace the existing wet scrubber with a new FF and cool the entering exhaust gas stream using either a water spray system or alternatively a kiln preheater. Or sources may elect to replace the existing wet scrubber with a new venturi wet scrubber and thereby avoid the need for gas stream cooling. Based on our review of the technical performance of venturi scrubbers, we believe that a new, high efficiency venturi wet scrubber with a gas stream pressure drop of 35 inches water guage or more could meet the proposed lime kiln PM emission limit.

After reviewing the cost impacts of these control options, we chose the venturi wet scrubber as the basis for estimating the proposed rule's impacts (for kilns with wet scrubbers not meeting the proposed PM limit) because, in general, this option was the least expensive in terms of capital cost and, in some cases, annual cost as well. We request comment on our cost analyses of these control options (the details of which may be found in the docket) and on our determination to base the impacts estimates of the proposed rule on this venturi scrubber control option. We also acknowledge that the NLA's cost estimates lead them to conclude that it may be less expensive for sources to install a FF with gas stream cooling rather than install new venturi wet scrubbers.

In addition, there would be different emission and environmental impacts depending on the control option selected by sources with existing wet scrubbers not meeting the proposed PM limit. For the control option of a wet scrubber being replaced with a new FF, we estimate that national HCl emissions would increase by about 1,000 tons/yr, and national SO_2 emissions would increase by about 15,000 tons/yr. The NLA commented during the SBAR Panel that the resulting SO_2 increases under this option could cause a lime plant to become subject to new source review (NSR) rule requirements, and the source would, thus, incur additional costs associated with this review. Sources utilizing this control option may or may not be excluded from NSR if it is a pollution control project. Under the current NSR rules and guidance, a net emissions increase of 40 tons/yr SO_2 would trigger NSR even if this increase was due to a pollution control project, unless the control project qualified for a Pollution Control Project Exclusion. The EPA is currently revising the NSR rules. Finally, no change in SO_2 or HCl emissions would be expected for sources that replace existing wet scrubbers with new venturi wet scrubbers. With no resultant SO_2 emissions increases, it would be unlikely that sources would seek an NSR exclusion.

We also acknowledge there would be additional negative environmental impacts if all kilns with wet scrubbers not meeting the proposed PM limit are replaced with new venturi wet scrubbers. These impacts would include an increase in national water consumption by about 4.2 billion gallons per year from current levels, and an increase in electricity consumption by about 7.2 million kilowatt-hours/yr. (Industry estimates that along with this additional electricity consumption, an additional 8,000 tons/yr of carbon dioxide would be emitted from fossil fuel fired electrical power generating stations.) These increases result from the new venturi wet scrubbers requiring a higher water flow rate and larger fans to handle the increased gas pressure drop. We note, however, that with a higher PM limit for a possible wet scrubber subcategory, national PM emissions from lime kilns would be approximately 1,000 tons/yr greater than if there were no subcategory.

2. Mercury From the Kiln

Mercury emitted from lime kilns originates from the raw materials and fuels fed to the kiln. In considering a potential floor for mercury from these emission units, we considered both at-the-stack controls and substitution of feed and fuels as a potential basis for a standard. Since no sources are controlling the mercury emissions from their lime kilns using at-the-stack controls, such control cannot be the basis for a floor standard.

Switching of raw material feed or fuel is also not a basis for establishing a floor standard because these means of control are not available, leading to unachievable standards. Nor is there any indication that feed or fuel substitution would control mercury emissions from these sources. The reasons for these conclusions are set out below.

Substitution of raw materials, *i.e.*, feedstock substitution, is not an available means of control. First, raw materials are proprietary. No kiln can use another's raw materials. Thus, a standard based on feed control is not achievable because it is not even available. No second kiln could duplicate a ''low mercury'' source's performance, even assuming there was a low mercury source of feed material. In addition, we are aware of no data or information indicating that a certain type of limestone or source of limestone has a lower concentration of mercury, and although such deposits may exist, we do not believe such deposits of limestone exist sufficiently throughout the U.S. to supply the industry. Further, assuming there was a widespread source of limestone with a lower level of mercury (which is highly unlikely), it is unclear that this would lead to lower mercury emissions (or what the reductions of mercury emissions would be), since mercury emissions from lime kilns also originate from the fuel.

A floor standard based on substitution of so-called clean mercury fossil fuels is likewise not achievable due to unavailability of this means of control. The floor for existing sources would have to be based on either coal or natural gas substitution since there are enough sources using coal or natural gas to constitute a MACT floor for existing kilns. However, there are simply inadequate amounts of ''low mercury'' coal and natural gas available to power this industry. Thus, we see no feasible way for the lime industry to function if it can only use the 6 percent ''cleanest'' fuels to make its product. See H.R. Rep. No. 101–490, 101st Cong. 2d sess. 328 (''MACT is not intended * * * to drive sources to the brink of shutdown'').

Nor do we see any evidence that ''low mercury'' coal exists. Our analysis shows that the average mercury levels for the various coal types—bituminous, subbituminous, and lignite coals—are nearly the same at around 0.1 part per million by weight. These data show that there is not a certain type of coal that has a lower mercury level.

Also, based on the data in the EPA Utility Study and Report to Congress, emissions of other HAP metals would or could increase if coal or oil were to be substituted to try and achieve lower mercury emissions. These data indicate that levels of HAP metals in coal are so variable that decreases in emissions of one HAP metal are offset by increases in others when different coals are used as fuel. These data also show that if fuel oil is substituted for coal, nickel emissions will increase because fuel oil typically contains more nickel than coal. Thus, based on these data, we believe that fuel switching among coal and oil is not an effective means of controlling HAP metal emissions (including mercury), even if this were an available means of control.

For new as well as existing kilns, we considered basing the floor for mercury

on the use of natural gas, although the few mercury emissions data we have cannot allow us to definitively state what effect fuel type has on emissions. However, we do not regard natural gas fuel substitution as an available technology for new sources. Natural gas is not readily available throughout the U.S., *i.e.*, the infrastructure for its delivery (pipelines, pumping stations, etc.) is not available for all locations where lime manufacturing plants exist and is not expected to be economically available to build such infrastructure throughout the U.S. Although U.S. natural gas reserves may be considered plentiful, the gas still needs to be extracted through drilling and the construction of wells. Thus, for plants located far from a natural gas pipeline, natural gas is not a reasonable alternative. Additionally, although the infrastructure (pipelines, wells, storage facilities) can be built, the delivery capacity will likely not be available to accommodate a fuel switch to natural gas within the time frame by which new kilns would have to comply.

We note further that the amounts of mercury emitted by these kilns is small, roughly one pound per plant per year. Although the floor provisions of the CAA do not provide a *de minimis* exception to establishing floors, see *National Lime* v. *EPA*, 233 F. 3d at 640, the small amounts of mercury emitted reinforce the Agency's technical determinations that control via substitutions of feed or fuel are neither feasible nor likely to be effective since random variability in these feed and fuels will likely result in equal amounts of mercury being emitted in any case. Indeed, it is the Agency's view that not even a single source could reliably duplicate its own performance for mercury due to the small amounts emitted and the random variability of fuels and feed.

3. PM and Opacity From MPO

There are numerous types of MPO such as grinding mills, storage bins, conveying systems (such as bucket elevators and belt conveyors), transfer points, and screening operations at each lime manufacturing plant. We investigated whether there were any MPO subject to standards more stringent than the NSPS subpart OOO, or otherwise performing with consistently lower emissions than required by the NSPS (*i.e.*, performing at a lower level without being subject to a regulatory limit), that would serve as a basis for a MACT floor. To this end, we reviewed the applicable requirements for lime manufacturing plants located in nonattainment areas for PM10 (particulate matter with an aerodynamic diameter less than or equal to 10 microns), since presumably these areas of the U.S. would be the most likely to have more stringent PM emission limitations. We found seven lime manufacturing plants located in PM10 nonattainment areas. The information available to us on these plants indicated that no MPO were subject to standards more stringent than the NSPS subpart OOO or otherwise performing better. We believe that the NSPS subpart OOO standards reasonably reflect the level of performance achieved by, and achievable by, the average of the best performing 12 percent of sources.

The basis for the MACT floor for these emission units is the NSPS subpart OOO as it has been applied to lime manufacturing plants, which serves as a reasonable measure of the performance of the average of the best performing sources. The NSPS subpart OOO sets PM, opacity, and visible emission limits for limestone MPO that were constructed, reconstructed, or modified after August 31, 1983. We investigated whether enough of these MPO are located at lime manufacturing plants subject to the NSPS subpart OOO to make a MACT floor determination. Using the median approach to determining MACT floors, at least 6 percent would need to be subject to the NSPS subpart OOO.

In one approach to estimating the number of MPO at lime manufacturing plants that are subject to the NSPS subpart OOO, we estimate that there are 104 lime manufacturing plants in the U.S., and that at least seven of these were built after August 31, 1983. All of the MPO associated with these new, greenfield lime manufacturing plants that were built after August 31, 1983, would be subject to the NSPS subpart OOO. Therefore, at least 6.7 percent (7/104) of the MPO are subject to the NSPS subpart OOO, enough for the NSPS subpart OOO to serve as a basis for the MACT floor.

In another approach to estimating the percentage of lime manufacturing plant MPO that are subject to the NSPS subpart OOO, our information shows that at least 31 lime kilns were constructed after August 31, 1983, out of a total of about 257 lime kilns in the U.S. Assuming that the MPO associated with these new lime kilns are also new, we estimate that 12.1 percent (31/257) of the MPO are subject to the NSPS subpart OOO.

Thus, with either approach to estimating the number of MPO at lime manufacturing plants that are subject to the NSPS subpart OOO, there are enough to support a MACT floor determination. Therefore, the MACT floor for MPO is equivalent to the NSPS subpart OOO.

E. How Did We Determine the MACT Floor for Emission Units at New Lime Manufacturing Plants?

The CAA requires the MACT floor for new sources to be based on the degree of emissions reductions achieved in practice by the best-controlled similar source.

For HAP metals emissions from MPO at new lime manufacturing plants, the floor is the NSPS subpart OOO (the same as for MPO at existing lime manufacturing plants). As discussed previously, we investigated whether there were any MPO subject to standards more stringent than the NSPS subpart OOO, or were emitting at lower rates without being subject to some type of regulatory standards, that would serve as a basis for MACT for new sources. The information available to us indicates that no MPO are subject to standards more stringent than the NSPS subpart OOO or otherwise performing better. Therefore, the floor is the NSPS subpart OOO.

For HAP metals emissions from kilns and coolers, the floor for those at new lime manufacturing plants is defined by the permit limits and emissions data for PM, where PM is a surrogate for non-mercury HAP metals. As previously described in this preamble, the MACT floor PM emission limit for lime kilns and coolers at existing lime manufacturing plants would be 0.12 lb PM/ton limestone. This determination was based on the median approach, *i.e.*, on the third best kiln permit limit of 0.12 lb PM/ton limestone. For kilns at new lime manufacturing plants, MACT is based on the best controlled similar source, which is the kiln permitted at the lowest emission limit (*i.e.*, 0.10 lb PM/ton limestone). Test data for this kiln indicated that the emission level was 0.0925 lb PM/ton, demonstrating that this permit limit is indeed achievable, and that the permit level reasonably approximates the level of performance that is consistently achievable by this kiln (so that a lower floor level would not be technically justified). Therefore, the emission limit for kilns and coolers at a new lime manufacturing plant is 0.10 lb/ton stone feed. As with the existing sources, this emission limit applies to the combined emissions from all of the kilns and coolers at a new lime manufacturing plant.

As previously described and for the same reasons that there is no MACT floor for mercury for kilns at existing lime manufacturing plants, and the

beyond-the-MACT-floor options considered for kilns at existing lime manufacturing plants are not justified, there is no MACT for mercury for kilns at new sources.

F. What Control Options Beyond the MACT Floor Did We Consider?

Raw material feed or fuel switching may be considered potential beyond-the-floor options for mercury, but as previously stated, no data or information is available indicating that a certain type of limestone or source of limestone has a lower concentration of mercury or is generally available throughout the country. In addition, even if deposits of limestone with low levels of mercury were to be found, it is unlikely that the limestone would be in close proximity to the majority of lime manufacturing plants in the U.S. and, thus, the cost of transporting the limestone to lime manufacturing plants would be prohibitively expensive. (There would also be increased energy use associated with this option in the form of increased fuel use to transport raw materials.) Most, if not all, lime manufacturing plants are sited and located adjacent to or in close proximity to their source of limestone (usually a quarry or mine) to avoid the high cost of transporting the material.

Regarding fuel switching as a possible mercury MACT floor or beyond-the-MACT-floor option for existing or new kilns, using a fuel with a lower level of mercury, such as natural gas (instead of coal), may result in lower lime kiln mercury emissions. However, there are no data available to quantify what the emissions reductions would be since our analysis indicates that most mercury emissions originate from the limestone feed material (compared with coal), and so the emissions reductions that would be achieved via switching from coal to natural gas are uncertain.

Further, as explained above, natural gas is not readily available throughout the U.S. (*i.e.*, the infrastructure for its delivery (pipelines, pumping stations, etc.)), is not available for all locations where lime manufacturing plants exist, and is not expected to be economically available to build such infrastructure throughout the U.S.

We considered another beyond-the-MACT-floor option based on activated carbon injection—a mercury control technology currently used on various types of waste combustors. However, based on the already relatively low levels of mercury emissions from lime kilns, we expect that relatively low emissions reductions would be achieved from this technology. (Use of activated carbon injection also generates a mercury-bearing waste stream to be disposed of.) The few mercury emissions data available (four data points) range from 0.7 to 2.5 micrograms/dry standard cubic meter (referenced to 7 percent oxygen). These uncontrolled levels are 10 to 100 times lower than the mercury emission standards established for various types of waste combustors and translate to an average annual emission rate of approximately 1 lb/year per lime kiln. Thus, this beyond-the-floor-control option would not be cost-effective because of the low emissions reductions expected and the high cost of control. Further, use of activated carbon generates an additional waste to be disposed of, and there are increases in energy use associated with the technology. After considering cost, energy, and non-air human health and environmental impacts, our initial conclusion is that basing beyond-the-floor standards for mercury on use of activated carbon is not warranted.

For HAP metal (PM) emissions from the kiln and MPO, no technologies were identified that would perform better than the technologies representative of the MACT floors that were determined.

Raw material feed or fuel switching is not a beyond-the-MACT-floor option for PM control from lime kilns, for reasons similar as to why it is not an option for mercury control. Regarding feed material switching, no data or information is available indicating that using a certain type or source of limestone would have a lower HAP metals content or would lead to reduced PM emissions. We do not believe that such deposits of limestone exist or that use of a certain type of limestone would consistently result in lower PM or metals emissions. Further, assuming there was a widespread source of limestone with a lower HAP metals content (which is highly unlikely), it is unclear that this would lead to lower HAP metals emissions (or what the reductions of the HAP metals emissions would be) since HAP metals emissions from lime kilns would also originate from the fuel. In addition, even if deposits of limestone with low levels of HAP metals or a lower PM-producing limestone were to be found, the cost of transporting the limestone to lime manufacturing plants would be prohibitively expensive. In addition, as noted earlier, there would be increased energy usage associated with the transport of large amounts of raw materials.

Regarding fuel switching as a possible beyond-the-MACT-floor option for HAP metals, using a fuel with a lower level of metals, such a natural gas (compared to coal), may result in lower lime kiln metals emissions. However, there are insufficient data available to quantify what the emissions reductions would be, since as we described above, lime kiln metals emissions also originate from the limestone feed material. Further, natural gas is not readily available throughout the U.S. (*i.e.*, the infrastructure for its delivery (pipelines, pumping stations, etc.)) and may not be available for all locations where lime manufacturing plants exist. Further, the cost of using natural gas may be prohibitively expensive as the cost of natural gas continues to rise as the growing demand for it rises as well. We do not regard this as an available means of control for this source category. See also the discussion above as to why the use of natural gas is not a viable control option for mercury; this rationale also applies to the use of natural gas as a beyond-the-floor option for PM and non-mercury HAP metals. Consequently, we are not proposing any beyond-the-floor standard for HAP metal control based on requiring the use of natural gas rather than other fossil fuels.

Therefore, the Agency is proposing that the floor standard for mercury reflect no existing reduction and after considering the factors set out in CAA section 112 (d)(2), that no beyond-the-floor alternatives are achievable.

G. How Did We Select the Format of the Proposed Rule?

The formats selected for the proposed emission limits vary according to the emission source, pollutant, and the MACT basis for the limits. The formats selected include a production-based emission limit, pollutant concentration limits, and opacity limits.

For the kiln PM standard, the ''lb PM/ton limestone'' format was selected to be consistent with the NSPS for lime manufacturing plants, 40 CFR 60, subpart HH. This format also encourages kiln energy efficiency. A more energy efficient kiln emits less exhaust gas per ton of limestone processed, which results in a higher gas concentration of PM compared to a less energy efficient kiln for the same amount of lime produced and PM emitted. A concentration format (e.g., grains PM/dry standard cubic foot) would penalize more energy efficient kilns.

For the PM and opacity standards for MPO, a concentration format for PM and the opacity limit requirements were selected to be consistent with the NSPS for nonmetallic minerals processing, 40 CFR part 60, subpart OOO.

H. How Did We Select the Test Methods and Monitoring Requirements for Determining Compliance With the Proposed Rule?

1. PM From the Kiln and Cooler

Today's proposed rule would require you to conduct a PM performance test and concurrently measure the stone feed rate to the kiln during the test. If you operate a lime cooler associated with the kiln being tested that has a separate exhaust to the atmosphere, you would be required to conduct a Method 5 (40 CFR part 60, appendix A–3) test on the cooler's exhaust concurrently with the kiln Method 5 test. Method 5 is the long-standing EPA method for measuring PM emissions from stationary sources.

For each kiln with an ESP, if you choose to monitor ESP operating parameters in lieu of using a PM detector or a COMS, you would be required to collect and record the input voltage and current to each electrical field of the ESP during the PM performance test, and then determine the 3-hour operating limit for each parameter for each electrical field based on these data. We expect that most lime manufacturing plants with ESP already monitor the electrical current and voltage, which provides an indication of the ESP performance and consequently PM emissions as well. For continuous compliance demonstrations, you would be required to maintain the 3-hour rolling average current and voltage input to each electrical field of the ESP greater than or equal to the average current and voltage input to each field of the ESP as established during the performance test. You would be required to collect and reduce the data as previously described. A 3-hour rolling average was selected to be consistent with the usual 3-hour time required for the PM test (three test runs of at least 1 hour).

You would also have the option of monitoring PM emissions from an ESP with a PM detector, in lieu of monitoring ESP parameters. Sources may determine that this would allow them greater operational flexibility. These devices would be similar to the BLDS for FF, which are discussed below, but they are based on light scattering technology (and not the triboelectric technology).

For each kiln with a wet scrubber, you would be required to collect and record the exhaust gas stream pressure drop across the scrubber and the scrubber liquid flow rate during the PM performance test, and then establish the 3-hour operating limit for each of these parameters based on the data. Pressure drop and flow rate are the scrubber operating parameters most often monitored and provide an indication of the scrubber's performance and consequently PM emissions as well. For continuous compliance demonstrations, you would be required to maintain the 3-hour rolling average pressure drop and flow rate greater than or equal to the operating limit established for these parameters during the performance test. You would be required to collect and reduce the data as previously described.

For kilns and lime coolers (if the cooler has a separate exhaust to the atmosphere) controlled by a FF, if you choose not to use a COMS, you would be required to install a BLDS. These systems are usually based on either triboelectric, electrodynamic, or light scattering technology and provide an indication of relative changes in particle mass loading. Leaks in filter bags or similar failures can be detected early enough to warn if additional inspection and preventative maintenance are needed to avoid major FF failures and excessive emissions. When the system detects an increase in relative PM emissions greater than a preset level, an alarm sounds automatically. The FF would be required to then be inspected to determine if corrective action is necessary. We believe that the monitoring of PM via BLDS is more appropriate, *i.e.*, a better technique, than monitoring FF operating parameters such as pressure drop. Some other MACT standards require the use of these types of monitors.

It should be noted that BLDS would also be required on positive pressure FF, which typically have multiple stacks. We specifically seek comment on the feasibility, practicality, and cost of using BLDS for these types of FF; and on alternative monitoring options for positive pressure FF that will provide a continuous indication of a kiln or cooler's compliance status with regard to PM. We also seek comment on whether EPA Method 9, 40 CFR part 60, appendix A–4 (manual observation of opacity) should be allowed in lieu of BLDS for positive pressure FF.

We are soliciting comment on requiring the application of PM continuous emission monitoring systems (CEMS) as a method to assure continuous compliance with the proposed PM emission limits for lime kilns and coolers. Specifically, we are soliciting comment on the cost of PM CEMS, and the relation of a PM CEMS requirement to the PM emission limits that are proposed today. This includes the level and averaging time of a CEMS-based PM emission limit, the methodology for deriving the limit from the available data for lime kilns, and any additional emissions reductions that could be expected as a result of using a PM CEMS.

We have continued to learn about the capabilities and performance of PM CEMS through performing and witnessing field evaluations and through discussions with our European counterparts. We believe there is sound evidence that PM CEMS should work on lime kilns. See the revisions we made to the performance specification for PM CEMS (Performance Specification 11 (PS–11), 40 CFR part 60, appendix B, and Procedure 2, 40 CFR part 60, appendix F) at 66 FR 64176, December 12, 2001.

During the review of a draft of the proposed rule by the SBAR Panel, small entity representatives and some Panel members requested that we consider allowing COMS in lieu of requiring BLDS and other monitoring requirements for PM. The proposed rule would allow the use of COMS as an alternative to BLDS, PM detectors, or the monitoring of ESP operating parameters. However, we request summary data on lime kiln opacity levels measured with a COMS, and we request information on the applicability, advantages, and disadvantages of using COMS and BLDS (such as each method's sensitivity or lack of sensitivity, availability and quality of promulgated or approved specifications and procedures to verify initial performance, potential interferences or other quality assurance problems, inapplicability to certain APCD designs or configurations, cost, and precision and accuracy relative to the operating system to be monitored and the standards to be proposed).

The proposed rule would allow sources with FF or ESP to comply with a 15 percent opacity operating limit, as an alternative to using a BLDS, a PM detector, or the use of ESP operating parameters. We request comment on using a COMS to monitor opacity as an emission limit (which would act as a surrogate for HAP metals emissions), rather than as an operating limit, and what an appropriate MACT floor opacity limit would be. The range of opacity levels under consideration as the MACT floor opacity limit for lime kilns would be between 10 and 15 percent. Sensitivity for COMS is dependent on the path length that the light beam measures; the longer the path length, the more sensitive the measurement. Performance Specification 1 (PS–1), 40 CFR part 60, Appendix B, gives the performance criteria for COMS used to measure opacity for opacity limitation standards

but we recognize that there are potential measurement errors associated with monitoring opacity in stacks, especially for emission units subject to opacity limits less than 10 percent. The uncertainties in measurement accuracy result from the following: (1) The unavailability of calibration attenuators for opacity levels below 6 percent; (2) the error associated with the calibration error allowances, the zero and upscale drift specifications, the mandatory drift adjustment levels, and the imprecision associated with the allowed compensation for dirt accumulation; and (3) the minimum full scale range of 80 percent required of COMS in PS–1. Because of these aforementioned limitations, COMS are generally considered good ''catastrophic'' control equipment indicators using opacity generally above levels greater than 10 percent opacity.

A 15 percent opacity level is the opacity limit under the NSPS for lime kilns (40 CFR part 60, subpart HH) and based on a preliminary analysis, may also be the median opacity permit limit for the six top performing lime kilns. In addition, the NLA provided information indicating that the opacity level of one of the top performing lime kilns (in terms of PM emissions and permit limit) often varies between 10 and 15 percent. Finally, we acknowledge that other MACT standards, such as the Petroleum Refinery MACT (67 FR 17761) and the Secondary Aluminum MACT (65 FR 15690), have allowed the use of COMS. In the Petroleum Refinery MACT, the rule allows sources the option to comply with the NSPS (40 CFR part 60, subpart J) emission limitations (which includes various opacity limits for certain emission units) in order to comply with the MACT standard.

Another approach to using a COMS that was raised by some SBAR Panel members was to use it in a way similar to how a BLDS would be used to indicate the need for inspection and maintenance of the PM control device. Under this approach, we would specify a time period over which a significant increase in opacity level would trigger inspection of the PM control device for leaks or other malfunctions and maintenance (if needed). We recognize that the COMS currently being used in the lime manufacturing industry have a potential for error at opacities below 10 percent, and that the relevant range of opacities for the aforementioned application would be below 10 percent. If COMS were allowed under the final rule, we would prefer to set an opacity limit because of the COMS' ability to directly measure opacity, instead of using the COMS in the aforementioned way (*i.e.*, similar to how a BLDS would be used). However, we solicit comment on this option, specifically including comments regarding the opacity levels expected from a kiln in compliance with the proposed PM limit and the sensitivity of COMS at those levels.

In accordance with the SBAR Panel's recommendations, we request comment on whether the proposed rule should specify separate, longer averaging time periods (or greater frequencies of occurrence) for demonstrating compliance with operating parameter limits, or other alternative approaches for demonstrating compliance with operating parameter limits. For example, the Panel recommended that we request comment on an approach for demonstrating compliance involving two tiers of standards for monitoring operating parameters whereby, if the conditions of the first monitoring tier are exceeded, the facility operator would be required to implement corrective actions specified in an established plan to bring the operating parameter levels back to established levels and, if the conditions of the second tier are exceeded, the exceedance would constitute a violation of the standard in question.

The SBAR Panel recommended that we take comment about the suitability of other PM control device operating parameters that could be monitored to demonstrate compliance with the PM emission limits in lieu of or in addition to the parameters proposed in today's rule. For example, small entity representatives suggested that for scrubber-equipped kilns, we should consider allowing the monitoring of parameters such as wet scrubber water pump amperage and wet scrubber exhaust gas outlet temperature in lieu of scrubber liquid flow rate. In addition, sources may request approval of alternative monitoring methods according to section 40 CFR 63.8(f).

2. PM From MPO

Since the MACT basis for these emission units is the NSPS subpart OOO, the performance test requirements for PM, opacity, and visible emissions are based in part on those in the NSPS subpart OOO, with additional requirements as well. Further, as is required under the NSPS subpart OOO, the proposed rule would require the performance test measurement of opacity from certain MPO, including fugitive emission units, using EPA Method 9, 40 CFR part 60, appendix A. We request comment on the suitability of using Method 9 for fugitive emission units, and whether other visual opacity measurement methods or techniques may be more suitable, such as provisions from proposed EPA Methods 203A, 203B, and/or 203C, 58 FR 61640, January 6, 1994.

For MPO subject to a PM emission limit and controlled by a wet scrubber, you would be required to collect and record the exhaust gas stream pressure drop across the scrubber and the scrubber liquid flow rate during the PM performance test and then establish the 3-hour operating limit for each of these parameters based on the data. Pressure drop and flow rate provide an indication of the scrubber's performance and consequently PM emissions as well.

For MPO subject to opacity limitations which do not use a wet scrubber control device, you would be required to conduct a 1-minute visible emissions check of each emission unit similar to the requirements under Method 22, 40 CFR part 60, appendix A7. The frequency of these checks is monthly but diminishes for the emission unit if no visible emissions are observed. If visible emissions are observed during any visible emissions check, you would be required to conduct a 6-minute test of opacity in accordance with Method 9 of appendix A to part 60 of this chapter. The Method 9 test would be required to begin within 1 hour of any observation of visible emissions and the 6-minute opacity reading would be required to not exceed the applicable opacity limit. Due to the many MPO at each lime manufacturing plant, this type of periodic monitoring for opacity was selected. This periodic approach to monitoring rewards sources that have no visible emissions by allowing the frequency of testing to be reduced. Finally, this monitoring approach (visual observations of opacity instead of continuous opacity monitoring systems) is similar to the monitoring regime used in the NSPS subpart OOO, which is the basis for MACT. Although we are not compelled to use identical monitoring regimes, we believe it is appropriate to do so here because it will ''reasonably ensure compliance with the standard.'' See *National Lime,* 233 F. 3d at 635.

3. Other General Requirements

The operations, maintenance, and monitoring plan would be required to ensure effective performance of the air pollution control devices, monitoring equipment (including bag leak and PM detection equipment), and to minimize malfunctions.

IV. Summary of Environmental, Energy and Economic Impacts

A. How Many Facilities Are Subject to the Proposed Rule?

There are approximately 110 lime manufacturing plants in the U.S., not including lime production facilities at pulp and paper mills. About 30 of these 110 plants are located at beet sugar manufacturing facilities which would not be subject to the proposed rule. We estimate that 70 percent of the remaining 80 lime manufacturing plants would be major sources, co-located with major sources, or part of major sources, and, thus, 56 lime manufacturing plants would be subject to this proposed rule.

B. What Are the Air Quality Impacts?

We estimate that all sources (not including lime manufacturing plants at beet sugar factories) in the lime manufacturing source category collectively emit approximately 9,700 Mg/yr (10,700 tons/yr) of HAP. These HAP estimates include emissions of HCl and HAP metals from existing sources and projected new sources over the next 5 years. We estimate that the proposed standards would reduce HAP metals emissions from the lime manufacturing source category by about 21 Mg/yr (23 tons/yr), and would reduce HCl emissions by about 213 Mg/yr (235 tons/yr). In addition, we estimate that the proposed standards would reduce PM emissions by about 14,000 Mg/yr (16,000 tons/yr) from a baseline level of 29,000 Mg/yr (32,000 tons/yr), and the proposed standards would reduce SO_2 emissions by about 3,400 Mg/yr (3,700 tons/yr) from a baseline of 128,000 Mg/yr (141,000 tons/yr). The roughly 2 percent decrease in HCl and SO_2 emissions is the projected result of uncontrolled sources installing baghouses to comply with the proposed PM standards.

Tables 1 and 2 summarize the baseline emissions and emissions reductions (or increases, in parentheses) estimates, in English and Metric units, respectively.

TABLE 1.—TOTAL NATIONAL BASELINE EMISSIONS AND EMISSIONS REDUCTIONS FOR BOTH NEW AND EXISTING LIME MANUFACTURING PLANTS

[English Units]

Emissions	PM (tons/yr)	HAP metals (tons/yr)	HCl (tons/yr)	SO_2 (tons/yr)
Baseline emissions—existing sources	24,352	31.5	8,541	112,198
Baseline emissions—new sources	7,508	10.1	2,161	28,779
Total baseline emissions	31,861	41.6	10,702	140,977
Emissions reductions— existing sources	12,407	17.7	235	3,700
Emissions reductions—new sources	3,154	5.4	0	0
Total emissions reductions	15,561	23	235	3,700

TABLE 2.—TOTAL NATIONAL BASELINE EMISSIONS AND EMISSIONS REDUCTIONS FOR BOTH NEW AND EXISTING LIME MANUFACTURING PLANTS

[Metric Units]

Emissions	PM (Mg/yr)	HAP metals (Mg/yr)	HCl (Mg/yr)	SO_2 (Mg/yr)
Baseline emissions—existing sources	22,093	28.6	7,748	101,787
Baseline emissions—new sources	6,811	9.2	1,961	26,108
Total baseline emissions	28,904	38	9,709	127,895
Emissions reductions—existing sources	11,256	16	213	3,356
Emissions reductions—new sources	2,861	4.9	0	0
Total emissions reductions	14,117	21	213	3,356

C. What Are the Water Impacts?

We expect overall water consumption for existing sources to increase by about 4,200 million gallons per year from current levels as a result of the proposed rule. This estimate is based on the assumption that sources will replace existing wet scrubbers with new, more efficient venturi wet scrubbers (that require more water flow rate) to comply with the PM standards. For new sources, we expect no additional water consumption as we do not expect new sources to install wet scrubbers for PM control.

D. What Are the Solid Waste Impacts?

As a result of the proposed rule, solid waste would be generated as additional PM is collected in complying with the PM standards. We estimate that about 16,000 tons/yr of additional solid waste would be generated as a result of today's proposed rule. This estimate does not include consideration that some of this would most likely be recycled directly to the lime kiln as feedstock or sold as byproduct material (agricultural lime).

E. What Are the Energy Impacts?

We expect electricity demand from existing sources to increase by about 7.2 million kilowatt-hours/yr (kWh/yr) as a result of the proposed rule. This estimate is based on the assumption that sources will replace existing wet scrubbers with new, more efficient venturi wet scrubbers (that require more electricity). For new sources, we expect an increase in electricity usage of about 0.1 million kWh/yr as a result of the proposed rule. This electricity demand is associated with complying with the PM standards for new sources.

F. What Are the Cost Impacts?

The estimated total national capital cost of today's proposed rule is $24.2 million (for large businesses) plus $11.9 million for small businesses for a total of $36.1 million. This capital cost applies to projected new and existing sources and includes the cost to purchase and install emissions control equipment (*e.g.*, existing PM control equipment upgrades), monitoring equipment (the cost of the rule is estimated assuming bag leak and PM detectors would be installed on all lime kilns located at major sources, although other monitoring options are available, such as COMS), the costs of initial performance tests, and emissions tests

to measure HCl to determine whether a source is a major source and hence subject to the standards.

The estimated annualized costs of the proposed standards are $22.4 million. The annualized costs account for the annualized capital costs of the control and monitoring equipment, operation and maintenance costs, periodic monitoring of materials handling operations, and annualized costs of the initial emissions testing.

G. What Are the Economic Impacts?

The results of our economic impact analysis indicate the average price per ton for lime would increase by 2.1 percent (or $1.17 per metric ton) as a result of the proposed standard for lime manufacturers. Overall lime production is projected to decrease by 1.8 percent as a result of the proposed standard. Because of the uncertainty of control cost information for large firms, we accounted for these firms as a single aggregate firm in the economic model, so it is not plausible to estimate closures for large firms. However, among the 19 small firms in this industry, we project that two firms are at risk for closure.

Based on the market analysis, we project the annual social costs of the proposed rule to be $20.2 million. As a result of higher prices and lower consumption levels, we project the consumers of lime (both domestic and foreign) would lose $19.7 million annually, while domestic producer surplus would decline by $0.8 million. Foreign producers would gain as a result of the proposed regulation with profit increasing by $0.2 million. For more information regarding the economic impacts, consult the economic impact analysis in the docket for this rule.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we would be required to determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted the action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the docket (see **ADDRESSEES** section of this preamble).

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If we comply by consulting, Executive Order 13132 requires us to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS would be required to include a description of the extent of our prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when we transmit a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, we would be required to include a certification from the Agency's Federalism Official stating that we have met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would not impose directly enforceable requirements on States, nor would it preempt them from adopting their own more stringent programs to control emissions from lime manufacturing facilities. Moreover, States are not required under the CAA to take delegation of federal NESHAP and bear their implementation costs, although States are encouraged and often choose to do so. Thus, Executive Order 13132 does not apply to the proposed rule. Although it does not apply to the proposed rule, we have coordinated with State and local officials in the development of the proposed rule and we are providing them an opportunity for comment. A summary of the concerns raised during the notice and comment process and our response to those concerns will be provided in the final rulemaking notice. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. There are no lime manufacturing plants located on tribal land. Thus Executive Order 13175 does not apply to the proposed rule. The EPA specifically solicits additional

comment on the proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we would be required to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, the proposed rule is not economically significant as defined by Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally would be required to prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we would be required to have developed under section 203 of the UMRA a small government agency plan. The plan would be required to provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total cost to the private sector is approximately $22.4 million per year. The proposed rule contains no mandates affecting State, local, or tribal governments. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, a small entity is defined as (1) A small business as a lime manufacturing company with less than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Despite the determination that the proposed rule would have no significant impact on a substantial number of small entities, EPA prepared a Small Business Flexibility Analysis that has all the components of an initial regulatory flexibility analysis (IRFA). An IRFA examines the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact. The Small Business Flexibility Analysis (which is included in the economic impact analysis) is available for review in the docket, and is summarized below.

Based on SBA's size definitions for the affected industries and reported sales and employment data, EPA identified 19 of the 45 companies owning potentially affected facilities as small businesses. Eight of these 45 companies manufacture beet sugar (which would not be subject to this proposed rule), three of which are small firms. Further, an additional 3 of the 19 small companies would not be subject to the proposed rule because they do not manufacture lime in a kiln (*e.g.*, they are only depot or hydration facilities), and/or we do not expect them to be major sources. It is therefore expected that 13 small businesses would be subject to this proposed rule. Although small businesses represent 40 percent of the companies within the source category, they are expected to incur 30 percent of the total industry annual compliance costs of $22.4 million.

The economic impact analysis we prepared for this proposed rule includes an estimate of the changes in product price and production quantities for the firms that this proposed rule would affect. The analysis shows that of the facilities owned by potentially affected small firms, two may shut down rather than incur the cost of compliance with the proposed rule. Because of the nature of their production processes and existing controls, we expect these two firms will incur significantly higher compliance costs than the other small firms.

Although any facility closure is cause for concern, it should be noted that in general, the burden on most small firms is low when compared to that of large firms. The average annual compliance costs for all small firms is $358,000, compared to $592,000 per year for large firms. If the two small firms expected to incur significantly higher control costs are excluded, the average annual compliance cost for the remaining firms

would be $205,000, which is much less than the average control costs for large firms.

The EPA's efforts to minimize small business impacts have materially improved today's proposal. Economic analysis of provisions under earlier consideration for inclusion in this proposed rule indicated greater impacts on small businesses than those proposed today. For the small companies expected to incur compliance costs, the average total annual compliance cost would have been roughly $567,000 per small company (compared with $358,000 in today's proposal). About 85 percent (11 firms) of those small businesses expected to incur compliance costs would have experienced an impact greater than 1 percent of sales (compared with 69 percent of those small businesses in today's proposal). And 77 percent (10 firms) of those small businesses expected to incur compliance costs would have experienced impacts greater than 3 percent of sales (compared with 31 percent of those small businesses in today's proposal).

Before concluding that the Agency could properly certify today's rule under the terms of the RFA, EPA conducted outreach to small entities and convened a Panel as required by section 609(b) of the RFA to obtain the advice and recommendations from representatives of the small entities that potentially would be subject to the proposed rule requirements. The Panel convened on January 22, 2002, and was comprised of representatives from OMB, the SBA Office of Advocacy, the EPA Small Business Advocacy Chair, and the Emission Standards Division of the Office of Air Quality Planning and Standards of EPA. The Panel solicited advice from eight small entity representatives (SER), including the NLA and member companies and non-member companies of the NLA. On January 30, 2002, the Panel distributed a package of descriptive and technical materials explaining the rule-in-progress to the SER. On February 19, 2002, the Panel met with the SER to hear their comments on preliminary options for regulatory flexibility and related information. The Panel also received written comments from the SER in response to both the outreach materials and the discussions at the meeting.

Consistent with RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to the elements of the initial RFA. A copy of the Panel report is included in the docket for the proposed rule.

The Panel considered numerous regulatory flexibility options in response to concerns raised by the SER. The major concerns included the affordability and technical feasibility of add-on controls.

These are the Panel recommendations and EPA's responses:

- Recommend that the proposed rule should not include the HCl work practice standard, invoking section 112(d)(4) of CAA.

Response: The proposal does not include an emission standard for HCl.

- Recommend that in the proposed rule, the MPO in the quarry should not be considered as emission units under the definition of affected source.

Response: The MPO in the quarry are excluded from the definition of affected source.

- Recommend that the proposed rule allow for the ''bubbling'' of PM emissions from all of the lime kilns and coolers at a lime plant, such that the sum of all kilns' and coolers' PM emissions at a lime plant would be subject to the PM emission limit, rather than each individual kiln and cooler.

Response: The proposed rule defines the affected source as including all kilns and coolers (among other listed emission units) at the lime manufacturing plant. This would allow the source to average emissions from the kilns and coolers for compliance determination.

- Recommend that we request comment on establishing a subcategory because of the potential increase in SO_2 and HCl emissions that may result in complying with the PM standard.

Response: We are requesting comment on this issue.

- Recommend that we undertake an analysis of the costs and emissions impacts of replacing scrubbers with dry APCD and present the results of that analysis in the preamble; and that we request comment on any operational, process, product, or other technical and/or spatial constraints that would preclude installation of a dry APCD.

Response: We are requesting comment on these issues and have presented said analysis.

- Recommend that the proposed rule allow a source to use the ASTM HCl manual method for the measurement of HCl for area source determinations.

Response: Today's proposal includes this provision.

- Recommend that we clarify in the preamble to the proposed rule that we are not specifically requiring sources to test for all HAP to make a determination of whether the lime plant is a major or area source, and that we solicit public comment on related issues.

Response: Today's preamble includes this language.

- Recommend that we solicit comment on providing the option of using COMS in place of BLDS; recommend that we solicit comment on various approaches to using COMS; and recommend soliciting comment on what an appropriate opacity limit would be.

Response: The preamble solicits comment on these issues.

- Recommend that EPA take comment on other monitoring options or approaches, including the following: using longer averaging time periods (or greater frequencies of occurrence) for demonstrating compliance with parameter limits; demonstrating compliance with operating parameter limits using a two-tier approach; and the suitability of other PM control device operating parameters that can be monitored to demonstrate compliance with the PM emission limits, in lieu of or in addition to the parameters currently required in the draft rule.

Response: Today's preamble solicits comment on these issues.

- Recommend that the incorporation by reference of Chapters 3 and 5 of the American Conference of Governmental Industrial Hygienists (ACGIH) Industrial Ventilation manual be removed from the proposed rule.

Response: Today's proposed rule does not include this requirement.

- Recommend that EPA reevaluate the assumptions used in modeling the economic impacts of the standards and conduct a sensitivity analysis using different price and supply elasticities reflective of the industry's claims that there is little ability to pass on control costs to their customers, and there is considerable opportunity for product substitution in a number of the lime industry's markets.

Response: The EIA does include the aforementioned considerations and analyses.

In summary, to better understand the implications of the proposed rule from the industries' perspective, we engaged with the lime manufacturing companies in an exchange of information, including small entities, during the overall rule development. Prior to convening the Panel, we had worked aggressively to minimize the impact of the proposed rule on small entities, consistent with our obligations under the CAA, and these pre-Panel efforts have been discussed previously in this preamble. These are summarized below.

1. Lime manufacturing operations at beet sugar plants, of which three are small businesses, would not be affected sources.

2. Lime manufacturing plants that produce hydrated lime only would not be affected sources as well.

3. We are proposing PM emission limits which allow the affected source, including small entities, flexibility in choosing how they will meet the emission limit. And in general, the emission limitations selected are all based on the MACT floor, as opposed to more costly beyond-the-MACT-floor options that we considered. An emission limit for mercury was rejected since it would have been based on a beyond-the-MACT-floor control option.

4. We are proposing that compliance demonstrations for MPO be conducted monthly rather than on a daily basis. We believe this will reduce the amount of records needed to demonstrate compliance with the rule when implemented.

5. Furthermore, we are proposing the minimum performance testing frequency (every 5 years), monitoring, recordkeeping, and reporting requirements specified in the general provisions (40 CFR part 63, subpart A).

6. Finally, many lime manufacturing plants owned by small businesses would not be subject to the proposed standards because they are area sources.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

G. Paperwork Reduction Act

The information collection requirements in the proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We have prepared an Information Collection Request (ICR) document (2072.01), and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington DC 20460, by email at *auby.susan@epa.gov,* or by calling (202) 566–1672. You may also download a copy off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require development and implementation of an operations, maintenance, and monitoring plan, which would include inspections of the control devices but would not require any notifications or reports beyond those required by the NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the rule) is estimated to be 7,766 labor hours per year, at a total annual cost of $621,673. This estimate includes notifications that facilities are subject to the rule; notifications of performance tests; notifications of compliance status, including the results of performance tests and other initial compliance demonstrations that do not include performance tests; startup, shutdown, and malfunction reports; semiannual compliance reports; and recordkeeping. Total capital/startup costs associated with the testing, monitoring, reporting, and recordkeeping requirements over the 3-year period of the ICR are estimated to be $1,000,000, with annualized costs of $377,933.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: (1) Review instructions; (2) develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, the EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington DC 20460; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1301 Constitution Avenue, NW., Room 6143, Washington DC 20460 ((202) 566–1700); and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 20, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by January 21, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposal.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rule involves technical standards. The EPA cites the following standards in the proposed rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 9, 17, 18, 22, 320, 321. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 5D, 9, 22,

and 321. The search and review results have been documented and are placed in the docket (A–95–41) for the proposed rule.

The three voluntary consensus standards described below were identified as acceptable alternatives to EPA test methods for the purposes of the proposed rule.

The voluntary consensus standard ASME PTC 19–10–1981-Part 10, ''Flue and Exhaust Gas Analyses,'' is cited in the proposed rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981-Part 10 is an acceptable alternative to Method 3B.

The voluntary consensus standard ASTM D6420–99, ''Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS),'' is appropriate in the cases described below for inclusion in the proposed rule in addition to EPA Method 18 codified at 40 CFR part 60, appendix A, for the measurement of organic HAP from lime kilns. The standard ASTM D6420–99 will be incorporated by reference in § 63.14.

Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 is a suitable alternative to Method 18 only where the target compound(s) are those listed in Section 1.1 of ASTM D6420–99, and the target concentration is between 150 parts per billion by volume (ppbv) and 100 ppmv.

For target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the proposed rule specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Section 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

As a result, EPA will cite ASTM D6420–99 in the proposed rule. The EPA will also cite Method 18 as a GC option in addition to ASTM D6420–99. This will allow the continued use of GC configurations other than GC/MS.

The voluntary consensus standard ASTM D6735–01, ''Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method,'' is an acceptable alternative to EPA Method 320 for the purposes of the proposed rule provided that the additional requirements described in Section 63.7142 of the proposed rule are also addressed in the methodology.

In addition to the voluntary consensus standards EPA uses in the proposed rule, the search for emissions measurement procedures identified 15 other voluntary consensus standards. The EPA determined that 12 of these 15 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the proposed rule were impractical alternatives to EPA test methods for the purposes of this rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination can be found in the docket for the proposed rule.

Three of the 15 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; and ASTM D6348–98, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' for EPA Method 320.

The standard ASTM D6348–98, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy'' has been reviewed by the EPA and comments were sent to ASTM. Currently, the ASTM Subcommittee D22–03 is now undertaking a revision of ASTM D6348–98. Upon successful ASTM balloting and demonstration of technical equivalency with the EPA FTIR methods, the revised ASTM standard could be incorporated by reference for EPA regulatory applicability.

Section 63.7112 and Table 4 to proposed subpart AAAAA list the EPA testing methods included in the proposed rule. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

The proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Although compliance with the proposed rule could possibly lead to increased electricity consumption as sources may replace existing wet scrubbers with venturi wet scrubbers that require more electricity, the proposed rule would not require that venturi scrubbers be installed, and in fact, there are some alternatives that may decrease electrical demand. Further, the proposed rule would have no effect on the supply or distribution of energy. Although we considered certain fuels as potential bases for MACT, none of our proposed MACT determinations are based on fuels. Finally, we acknowledge that an interpretation limiting fuel use to the top 6 percent of ''clean HAP'' fuels (if they existed) could potentially have adverse implications on energy supply.

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, Air pollution control, Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, Lime manufacturing, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[Amended]

2. Section 63.14 is amended by adding paragraphs (b)(27) and (b)(28) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(27) ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography—Mass Spectrometry (GC/MS), IBR approved [date of publication of the final rule in the **Federal Register**] for § 63.7142.

(28) ASTM D6735–01, Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method, IBR approved [date of publication of the final rule in the **Federal Register**] for § 63.7142.

* * * * *

3. Part 63 is amended by adding subpart AAAAA to read as follows:

Subpart AAAAA—National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants

What This Subpart Covers

Sec.

Emission Limitations

General Compliance Requirements

Testing and Initial Compliance Requirements

Continuous Compliance Requirements

Notifications, Reports, and Records

Other Requirements and Information

Tables to Subpart AAAAA of Part 63

What This Subpart Covers

§ 63.7080 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for lime manufacturing plants. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.7081 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a lime manufacturing plant (LMP) that is a major source, or that is located at, or is part of, a major source of hazardous air pollutant (HAP) emissions, unless the LMP is located at a kraft pulp mill, soda pulp mill or beet sugar manufacturing plant.

(1) An LMP is an establishment engaged in the manufacture of lime product (calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite) by calcination of limestone, dolomite, shells or other calcareous substances.

(2) A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year from all emission sources at the plant site.

(b) [Reserved]

§ 63.7082 What parts of my plant does this subpart cover?

(a) This subpart applies to each existing, reconstructed, or new LMP that is located at a major source.

(b) The affected source is the collection of all of the emission units listed in paragraph (c) of this section.

(c) Emission units are lime kilns, lime coolers and materials processing operations (MPO) as defined in paragraph (d) of this section.

(d) Materials processing operations are raw material grinding mills, raw material storage bins, conveying system transfer points, bulk loading or unloading systems, screening operations, bucket elevators and belt conveyors, except as provided by paragraphs (e) through (g) of this section.

(e) Materials processing operations that process only lime product or fuel are not subject to this subpart.

(f) Truck dumping into any screening operation, feed hopper or crusher is not subject to this subpart.

(g) The first emission unit in the sequence of MPO that is subject to this subpart is the raw material storage bin. Any MPO which precedes the raw material storage bin is not subject to this subpart. Furthermore, the first conveyor transfer point subject to this subpart is the transfer point associated with the conveyor transferring material from the raw material storage bin to the next emission unit.

(h) Lime hydrators are not subject to this subpart.

(i) [Reserved]

(j) A new affected source is the collection of all emission units listed in paragraph (c) of this section for which construction begins after December 20, 2002, if you met the applicability criteria in § 63.7081 at the time you commenced construction.

(k) An affected source is reconstructed if it meets the criteria for reconstruction defined in § 63.2.

(l) [Reserved]

(m) An affected source is existing if it is not new or reconstructed.

§ 63.7083 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If you start up your affected source before the [date of publication of the final rule in the **Federal Register**], you must comply with the emission limitations no later than [date of publication of the final rule in the **Federal Register**].

(2) If you start up your affected source after [date of publication of the final

rule in the **Federal Register**], then you must comply with the emission limitations for new and reconstructed affected sources upon startup of your affected source.

(b) If you have an existing LMP, you must comply with the applicable emission limitations for the existing affected source, and you must have completed all applicable performance tests no later than [3 years from the date of publication of the final rule in the **Federal Register**]. The compliance date is site-specific for existing LMP and is the day following completion of all the performance tests required under § 63.7110(a).

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, the deadlines specified in paragraphs (c)(1) and (2) of this section apply.

(1) Any portion of the LMP that is a new affected source or a reconstructed affected source must be in compliance with this subpart upon startup.

(2) The emission units of the existing LMP subject to emission limitations under this subpart must be in compliance with this subpart within 3 years after the source becomes a major source of HAP.

(d) You must meet the notification requirements in § 63.7130 according to the schedule in § 63.7130 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations

§ 63.7090 What emission limitations must I meet?

(a) You must meet each emission limitation in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

General Compliance Requirements

§ 63.7100 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must be in compliance with the opacity and visible emission limits in this subpart during the times specified in § 63.6(h)(1).

(c) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(d) You must prepare and implement for each LMP, a written operations, maintenance, and monitoring (OM&M) plan. You must submit the plan to the applicable permitting authority for review and approval as part of the application for a 40 CFR part 70 or 40 CFR part 71 permit. Any subsequent changes to the plan must be submitted to the applicable permitting authority for review and approval. Pending approval by the applicable permitting authority of an initial or amended plan, you must comply with the provisions of the submitted plan. Each plan must contain the following information:

(1) Process and control device parameters to be monitored to determine compliance, along with established operating limits or ranges, as applicable, for each emission unit.

(2) A monitoring schedule for each emission unit.

(3) Procedures for the proper operation and maintenance of each emission unit and each air pollution control device used to meet the applicable emission limitations and operating limits in Tables 1 and 2 to this subpart, respectively.

(4) Procedures for the proper installation, operation, and maintenance of monitoring devices or systems used to determine compliance, including:

(i) Calibration and certification of accuracy of each monitoring device;

(ii) Performance and equipment specifications for the sample interface, parametric signal analyzer, and the data collection and reduction systems;

(iii) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), and (4)(ii); and

(iv) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d).

(5) Procedures for monitoring process and control device parameters.

(6) Corrective actions to be taken when process or operating parameters or add-on control device parameters deviate from the operating limits specified in Table 2 to this subpart, including:

(i) Procedures to determine and record the cause of a deviation or excursion, and the time the deviation or excursion began and ended; and

(ii) Procedures for recording the corrective action taken, the time corrective action was initiated, and the time and date the corrective action was completed.

(7) A maintenance schedule for each emission unit and control device that is consistent with the manufacturer's instructions and recommendations for routine and long-term maintenance.

(e) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

Testing and Initial Compliance Requirements

§ 63.7110 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) If you have an existing affected source, you must complete all applicable performance tests within 3 years after [date of publication of the final rule in the **Federal Register**], according to the provisions in §§ 63.7(a)(2) and 63.7114.

(b) If you commenced construction or reconstruction of an LMP between December 20, 2002 and [date of publication of the final rule in the **Federal Register**], you must demonstrate initial compliance with either the proposed emission limitation or the promulgated emission limitation no later than 180 calendar days after [date of publication of the final rule in the **Federal Register**] or within 180 calendar days after startup of the source, whichever is later, according to §§ 63.7(a)(2)(ix) and 63.7114.

(c) If you commenced construction or reconstruction between December 20, 2002 and [date of publication of the final rule in the **Federal Register**], and you chose to comply with the proposed emission limitation when demonstrating initial compliance, you must conduct a demonstration of compliance with the promulgated emission limitation within 3 years after [date of publication of the final rule in the **Federal Register**] or after startup of the source, whichever is later, according to §§ 63.7(a)(2)(ix) and 63.7114.

(d) For each emission limitation in Table 3 to this subpart that applies to you where the monitoring averaging period is 3 hours, the 3-hour period for demonstrating continuous compliance for emission units within existing affected sources at LMP begins at 12:01 a.m. on the compliance date for existing affected sources, that is, the day following completion of the initial performance test(s), and ends at 3:01 a.m. on the same day.

(e) For each emission limitation in Table 3 to this subpart that applies to you where the monitoring averaging period is 3 hours, the 3-hour period for demonstrating continuous compliance for emission units within new or reconstructed affected sources at LMP begins at 12:01 a.m. on the day following completion of the initial compliance demonstration tests, as required in paragraphs (b) and (c) of this

section, and ends at 3:01 a.m. on the same day.

§ 63.7111 When must I conduct subsequent performance tests?

You must conduct a performance test within 5 years following the initial performance test and within 5 years following each subsequent performance test thereafter.

§ 63.7112 What performance tests, design evaluations, and other procedures must I use?

(a) You must conduct each performance test in Table 4 to this subpart that applies to you.

(b) Each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the specific conditions specified in Table 4 to this subpart.

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) Except for opacity and visible emission observations, you must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(e) The emission rate of particulate matter (PM) from the lime kiln (and the lime cooler if there is a separate exhaust to the atmosphere from the lime cooler) must be computed for each run using Equation 1 of this section:

$$E = \left(C_k Q_k + C_c Q_c\right) / PK \qquad \text{(Eq. 1)}$$

Where:

E = Emission rate of PM, kg/Mg (lb/ton) of stone feed.

C_k = Concentration of PM in the kiln effluent, g/dscm (grain/dscf).

Q_k = Volumetric flow rate of kiln effluent gas, dscm/hr (dscf/hr).

C_c = Concentration of PM in the cooler effluent, g/dscm (grain/dscf). This value is zero if there is not a separate cooler exhaust to the atmosphere.

Q_c = Volumetric flow rate of cooler effluent gas, dscm/hr (dscf/hr). This value is zero if there is not a separate cooler exhaust to the atmosphere.

P = Stone feed rate, Mg/hr (ton/hr).

K = Conversion factor, 1000 g/kg (7000 grains/lb).

(f) The combined particulate emission rate from all kilns and coolers within an existing affected source at an LMP must be calculated using Equation 2 of this section:

$$E_T = \sum_{i=1}^{n} E_i P_i / \sum_{i=1}^{n} P_i \qquad \text{(Eq. 2)}$$

Where:

E_T = Emission rate of PM from all kilns and coolers at an existing LMP, kg/Mg (lb/ton) of stone feed.

E_i = Emission rate of PM from kiln i, or from kiln/cooler combination i, kg/Mg (lb/ton) of stone feed.

P_i = Stone feed rate to kiln i, Mg/hr (ton/hr).

n = Number of existing kilns at the existing affected source.

(g) The combined particulate emission rate from all new or reconstructed kilns and coolers must be calculated using Equation 3 of this section:

$$E_{TN} = \sum_{j=1}^{m} E_j P_j / \sum_{j=1}^{m} P_j \qquad \text{(Eq. 3)}$$

Where:

E_{TN} = Emission rate of PM from all kilns and coolers at a new or reconstructed LMP, kg/Mg (lb/ton) of stone feed.

E_j = Emission rate of PM from kiln j, or from kiln/cooler combination j, kg/Mg (lb/ton) of stone feed.

P_j = Stone feed rate to kiln j, Mg/hr (ton/hr).

m = Number of kilns and kiln/cooler combinations within the new or reconstructed affected source.

(h) Performance test results must be documented in complete test reports that contain the information required by paragraphs (h)(1) through (10) of this section, as well as all other relevant information. The plan to be followed during testing must be made available to the Administrator at least 60 days prior to testing, if requested.

(1) A brief description of the process and the air pollution control system;

(2) Sampling location description(s);

(3) A description of sampling and analytical procedures and any modifications to standard procedures;

(4) Test results, including opacity;

(5) Quality assurance procedures and results;

(6) Records of operating conditions during the test, preparation of standards, and calibration procedures;

(7) Raw data sheets for field sampling and field and laboratory analyses;

(8) Documentation of calculations;

(9) All data recorded and used to establish operating limits; and

(10) Any other information required by the test method.

(i) [Reserved]

(j) You must establish any applicable 3-hour rolling average operating limit indicated in Table 2 to this subpart according to the applicable requirements in Table 3 to this subpart and paragraphs (j)(1) through (4) of this section.

(1) Continuously record the parameter during the PM performance test and include the parameter record(s) in the performance test report.

(2) Determine the average parameter value for each 15-minute period of each test run.

(3) Calculate the test run average for the parameter by taking the average of all the 15-minute parameter values for the run.

(4) Calculate the 3-hour operating limit by taking the average of the three test run averages.

(k) For each building enclosing any MPO that is subject to a visible emission (VE) limit, you must conduct a VE check according to item 18 in Table 4 to this subpart, and in accordance with paragraphs (k)(1) through (3) of this section.

(1) Conduct visual inspections that consist of a visual survey of the building over the test period to identify if there are VE, other than condensed water vapor.

(2) Select a position at least 15 but not more than 1,320 feet from each side of the building with the sun or other light source generally at your back.

(3) The observer conducting the VE checks need not be certified to conduct Method 9 in appendix A to part 60 of this chapter, but must meet the training requirements as described in Method 22 in appendix A to part 60 of this chapter.

§ 63.7113 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to your OM&M plan required by § 63.7100(d) and paragraphs (a)(1) through (5) of this section, and you must install, operate, and maintain each continuous opacity monitoring system (COMS) as required by 40 CFR part 63, subpart A, General Provisions and according to PS–1 of appendix B to part 60 of this chapter.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15 minute period.

(2) To calculate a valid hourly value, you must have at least three of four equally spaced data values for that hour from a CPMS that is not out of control according to your OM&M plan.

(3) To calculate the average for each 3-hour averaging period, you must have at least two of three of the hourly averages for that period using only hourly average values that are based on valid data (*i.e.*, not from out-of-control periods). The 3-hour rolling average is updated each hour.

(4) You must conduct a performance evaluation of each CPMS in accordance with your OM&M plan.

(5) You must operate and maintain the CPMS in continuous operation according to the OM&M plan.

(b) For each flow measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and (b)(1) through (4) of this section.

(1) Use a flow sensor with a minimum tolerance of 2 percent of the flow rate.

(2) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(3) Conduct a flow sensor calibration check at least semiannually.

(4) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(c) For each pressure measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and (c)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(4) Check pressure tap pluggage daily.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) For each bag leak detection system, you must meet any applicable requirements in paragraphs (a)(1) through (5) and (d)(1) through (8) of this section.

(1) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The sensor on the bag leak detection system must provide output of relative PM emissions.

(3) The bag leak detection system must have an alarm that will sound automatically when it detects an increase in relative PM emissions greater than a preset level.

(4) The alarm must be located in an area where appropriate plant personnel will be able to hear it.

(5) For a positive-pressure fabric filter, each compartment or cell must have a bag leak detector. For a negative-pressure or induced-air fabric filter, the bag leak detector must be installed downstream of the fabric filter. If multiple bag leak detectors are required (for either type of fabric filter), detectors may share the system instrumentation and alarm.

(6) Bag leak detection systems must be installed, operated, adjusted, and maintained so that they follow the manufacturer's written specifications and recommendations. Standard operating procedures must be incorporated into the OM&M plan.

(7) At a minimum, initial adjustment of the system must consist of establishing the baseline output in both of the following ways:

(i) Adjust the range and the averaging period of the device.

(ii) Establish the alarm set points and the alarm delay time.

(8) After initial adjustment, the range, averaging period, alarm set points, or alarm delay time may not be adjusted except as specified in the OM&M plan required by § 63.7100(d). In no event may the range be increased by more than 100 percent or decreased by more than 50 percent over a 365 day period unless a responsible official, as defined in § 63.2, certifies in writing to the Administrator that the fabric filter has been inspected and found to be in good operating condition.

(e) For each PM detector, you must meet any applicable requirements in paragraphs (a)(1) through (5) and (e)(1) through (8) of this section.

(1) The PM detector must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The sensor on the PM detector must provide output of relative PM emissions.

(3) The PM detector must have an alarm that will sound automatically when it detects an increase in relative PM emissions greater than a preset level.

(4) The alarm must be located in an area where appropriate plant personnel will be able to hear it.

(5) For a positive-pressure electrostatic precipitator (ESP), each compartment must have a PM detector. For a negative-pressure or induced-air ESP, the PM detector must be installed downstream of the ESP. If multiple PM detectors are required (for either type of ESP), detectors may share the system instrumentation and alarm.

(6) Particulate matter detectors must be installed, operated, adjusted, and maintained so that they follow the manufacturer's written specifications and recommendations. Standard operating procedures must be incorporated into the OM&M plan.

(7) At a minimum, initial adjustment of the system must consist of establishing the baseline output in both of the following ways:

(i) Adjust the range and the averaging period of the device.

(ii) Establish the alarm set points and the alarm delay time.

(8) After initial adjustment, the range, averaging period, alarm set points, or alarm delay time may not be adjusted except as specified in the OM&M plan required by § 63.7100(d). In no event may the range be increased by more than 100 percent or decreased by more than 50 percent over a 365-day period unless a responsible official as defined in § 63.2 certifies in writing to the Administrator that the ESP has been inspected and found to be in good operating condition.

(f) For each emission unit equipped with an add-on air pollution control device, you must inspect each capture/collection and closed vent system at least once each calendar year to ensure that each system is operating in accordance with the operating requirements in item 6 of Table 2 to this subpart and record the results of each inspection.

(g) For each COMS used to monitor an add-on air pollution control device, you must meet the requirements in paragraphs (g)(1) and (2) of this section.

(1) Install the COMS at the outlet of the control device.

(2) Install, maintain, calibrate, and operate the COMS as required by 40 CFR part 63, subpart A, General Provisions and according to PS–1 of appendix B to part 60 of this chapter.

§ 63.7114 How do I demonstrate initial compliance with the emission limitations standard?

(a) You must demonstrate initial compliance with each emission limitation in Table 1 to this subpart that applies to you, according to Table 3 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.7112(j) and Table 4 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.7130(e).

Continuous Compliance Requirements

§ 63.7120 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the emission unit is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.7121 How do I demonstrate continuous compliance with the emission limitations standard?

(a) You must demonstrate continuous compliance with each emission limitation in Tables 1 and 2 to this subpart that applies to you according to the methods specified in Tables 5 and 6 to this subpart.

(b) You must report each instance in which you did not meet each operating limit, opacity limit, and VE limit in Tables 2 and 6 to this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.7131.

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with the SSMP.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(e) For each MPO subject to an opacity limitation as specified in Table 1 to this subpart, and any vents from buildings subject to an opacity limitation, you must conduct a VE check according to item 1 in Table 6 to this subpart, and as follows:

(1) Conduct visual inspections that consist of a visual survey of each stack or process emission point over the test period to identify if there are visible emissions, other than condensed water vapor.

(2) Select a position at least 15 but not more 1,320 feet from the affected emission point with the sun or other light source generally at your back.

(3) The observer conducting the VE checks need not be certified to conduct Method 9 in appendix A to part 60 of this chapter, but must meet the training requirements as described in Method 22 of appendix A to part 60 of this chapter.

Notification, Reports, and Records

§ 63.7130 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(e), (f)(4) and (6), and 63.9 (a) through (j) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before [date of publication of the final rule in the **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after [date of publication of the final rule in the **Federal Register**].

(c) As specified in § 63.9(b)(3), if you startup your new or reconstructed affected source on or after [date of publication of the final rule in the **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after you startup your affected source.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, design evaluation, opacity observation, VE observation, or other initial compliance demonstration as specified in Table 3 or 4 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration required in Table 3 to this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each compliance demonstration required in Table 5 to this subpart that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.7131 What reports must I submit and when?

(a) You must submit each report in Table 7 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 7 to this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section:

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7083 and ending on June 30 or December 31, whichever date is the first date following the end of the first half calendar year after the compliance date that is specified for your source in § 63.7083.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first half calendar year after the compliance date that is specified for your affected source in § 63.7083.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to part 70 or part 71 of this chapter, if the permitting authority has established dates for submitting semiannual reports pursuant to § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A) of this chapter, you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information specified in paragraphs (c)(1) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations (emission limit, operating limit, opacity limit, and VE limit) that apply to you, a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which the operating parameter monitoring systems was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during the which the continuous monitoring system (CMS) was out-of-control during the reporting period.

(d) For each deviation from an emission limitation (emission limit, operating limit, opacity limit, and VE limit) that occurs at an affected source where you are not using a CMS to comply with the emission limitations in this subpart, the compliance report must contain the information specified in paragraphs (c)(1) through (4) and (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each emission unit during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from an emission limitation (emission limit, operating limit, opacity limit, and VE limit) occurring at an affected source where you are using a CMS to comply with the emission limitation in this subpart, you must include the information specified in paragraphs (c)(1) through (4) and (e)(1) through (12) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time and duration that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total emission unit operating time during that reporting period.

(8) An identification of each HAP that was monitored at the affected source.

(9) A brief description of the process units.

(10) A brief description of the CMS.

(11) The date of the latest CMS certification or audit.

(12) A description of any changes in CMS, processes, or controls since the last reporting period.

(f) Each facility that has obtained a title V operating permit pursuant to part 70 or part 71 of this chapter must report all deviations as defined in this subpart in the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A) of this chapter. If you submit a compliance report specified in Table 7 to this subpart along with, or as part of, the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A) of this chapter, and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation you may have to report deviations from permit requirements to the permit authority.

§ 63.7132 What records must I keep?

(a) You must keep the records specified in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations, and opacity and VE observations as required in § 63.10(b)(2)(viii).

(b) You must keep the records in § 63.6(h)(6) for VE observations.

(c) You must keep the records required by Tables 5 and 6 to this subpart to show continuous compliance with each emission limitation that applies to you.

(d) You must keep the records which document the basis for the initial applicability determination as required under § 63.7081.

§ 63.7133 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.7140 What parts of the General Provisions apply to me?

(a) Table 8 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you. When there is overlap between subpart A and subpart AAAAA, as indicated in the ''Explanations'' column in Table 8, subpart AAAAA takes precedence.

(b) [Reserved]

§ 63.7141 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or by a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the U.S. EPA) has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this

section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (6) of this section.

(1) Approval of alternatives to the non-opacity emission limitations in § 63.7090(a).

(2) Approval of alternative opacity emission limitations in § 63.7090(a).

(3) Approval of alternatives to the operating limits in § 63.7090(b).

(4) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(5) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(6) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7142 What are the requirements for claiming area source status?

(a) If you wish to claim that your LMP is an area source, you must measure the emissions of hydrogen chloride from all lime kilns at your plant using either:

(1) EPA Method 320 of appendix A to this part,

(2) EPA Method 321 of appendix A to this part, or

(3) ASTM Method D6735–01, Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method (incorporated by reference—see § 63.14), provided that the provisions in paragraphs (a)(3)(i) through (vi) of this section are followed.

(i) A test must include three or more runs in which a pair of samples is obtained simultaneously for each run according to section 11.2.6 of ASTM Method D6735–01 (incorporated by reference—see § 63.14).

(ii) You must calculate the test run standard deviation of each set of paired samples to quantify data precision, according to Equation 1 of this section:

$$RSD_a = (100)\ \text{Absolute Value}\left[\frac{C1_a - C2_a}{C1_a + C2_a}\right] \qquad \text{(Eq. 1)}$$

Where:

RSD_a = The test run relative standard deviation of sample pair a, percent.

$C1_a$ and $C2_a$ = The HCl concentrations, mg/dscm, from the paired samples.

(iii) You must calculate the test average relative standard deviation according to Equation 2 of this section:

$$RSD_{TA} = \frac{\sum_{a=1}^{p} RSD_a}{p} \qquad \text{(Eq. 2)}$$

Where:

RSD_{TA} = The test average relative standard deviation, percent.

RSD_a = The test run relative standard deviation for sample pair a.

p = The number of test runs, ≥3.

(iv) If RSD_{TA} is greater than 20 percent, the data are invalid and the test must be repeated.

(v) The post-test analyte spike procedure of section 11.2.7 of ASTM Method D6735–01 (incorporated by reference—see § 63.14) is conducted, and the percent recovery is calculated according to section 12.6 of ASTM Method D6735–01 (incorporated by reference—see § 63.14).

(vi) If the percent recovery is between 70 percent and 130 percent, inclusive, the test is valid. If the percent recovery is outside of this range, the data are considered invalid, and the test must be repeated.

(b) If you conduct tests to determine the rates of emission of specific organic HAP from lime kilns at LMP for use in applicability determinations under § 63.7081, you may use either:

(1) Method 320 of appendix A to this part, or

(2) Method 18 of appendix A to part 60 of this chapter, or

(3) ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS), (incorporated by reference—see § 63.14), provided that the provisions of paragraphs (b)(3)(i) through (iv) of this section are followed:

(i) The target compound(s) are those listed in section 1.1 of ASTM D6420–99 (incorporated by reference—see § 63.14);

(ii) The target concentration is between 150 parts per billion by volume and 100 ppmv;

(iii) For target compound(s) not listed in Table 1.1 of ASTM D6420–99 (incorporated by reference—see § 63.14), but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in section 10.5.3 of ASTM D6420–99 (incorporated by reference—see § 63.14), is conducted, met, documented, and submitted with the data report, even if there is no moisture condenser used or the compound is not considered water soluble; and

(iv) For target compound(s) not listed in Table 1.1 of ASTM D6420–99 (incorporated by reference—see § 63.14), and not amenable to detection by mass spectrometry, ASTM D6420–99 (incorporated by reference—see § 63.14) may not be used.

§ 63.7143 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Bag leak detector means the monitoring device and system for a fabric filter that identifies an increase in PM emissions resulting from a broken filter bag or other malfunction and sounds an alarm.

Belt conveyor means a conveying device that transports *material* from one location to another by means of an endless belt that is carried on a series of idlers and routed around a pulley at each end.

Bucket elevator means a *material* conveying device consisting of a head and foot assembly which supports and drives an endless single or double strand chain or belt to which buckets are attached.

Building means any frame structure with a roof.

Capture system means the equipment (including enclosures, hoods, ducts, fans, dampers, etc.) used to capture and transport PM generated by one or more process operations to a control device.

Control device means the air pollution control equipment used to reduce PM emissions released to the atmosphere from one or more process operations at an LMP.

Conveying system means a device for transporting *material* from one piece of equipment or location to another location within a plant. Conveying systems include but are not limited to feeders, *belt conveyors, bucket elevators* and pneumatic systems.

Deviation means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any

emission limitation (including any operating limit);

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any *emission limitation* (including any operating limit) in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, operating limit, or VE limit.

Emission unit means a *lime kiln, lime cooler,* raw material *grinding mill,* raw material *storage bin,* conveying system transfer point, bulk loading or unloading operation, *bucket elevator* or *belt conveyor* at an LMP.

Fugitive emission means PM that is not collected by a capture system.

Grinding mill means a machine used for the wet or dry fine crushing of any feed material. Grinding mills include, but are not limited to, the hammer, roller, rod, pebble and ball, and fluid energy. The grinding mill includes the air conveying system, air separator, or air classifier, where such systems are used.

Hydrator means the device used to produce hydrated lime or calcium hydroxide via the chemical reaction of the *lime product* and water.

Lime cooler means the device external to the *lime kiln* (or part of the *lime kiln* itself) used to reduce the temperature of the lime produced by the kiln.

Lime kiln means the device, including any associated preheater, used to produce a *lime product* from stone feed by calcination. Kiln types include, but are not limited to, rotary kiln, vertical kiln, rotary hearth kiln, double-shaft vertical kiln, and fluidized bed kiln.

Lime manufacturing plant (LMP) means any plant which uses a *lime kiln* to produce *lime product* from *limestone* or other calcareous material by calcination.

Lime product means the product of the *lime kiln* calcination process including, calcitic lime, dolomitic lime, and dead-burned dolomite.

Limestone means the material comprised primarily of calcium carbonate (referred to sometimes as calcitic or high calcium limestone), magnesium carbonate, and/or the double carbonate of both calcium and magnesium (referred to sometimes as dolomitic limestone or dolomite).

Material means the raw *limestone* or stone feed used at an LMP.

Materials processing operation (MPO) means the equipment and transfer points between the equipment used to prepare, process, or transport *limestone*, or stone feed, and includes *grinding mills,* raw material *storage bins*, conveying system transfer points, bulk loading or unloading systems, screening operations, *bucket elevators*, and *belt conveyors.*

Particulate matter (PM) detector means the monitoring device and system for an ESP that identifies relative levels in PM emissions and sounds an alarm at a preset level.

Positive pressure fabric filter or ESP means a fabric filter or ESP with the fan(s) on the upstream side of the control device.

Screening operation means a device for separating material according to size by passing undersize material through one or more mesh surfaces (screens) in series and retaining oversize material on the mesh surfaces (screens).

Stack emission means the PM that is released to the atmosphere from a *capture system.*

Stone feed means the *limestone* feedstock and mill scale or other iron oxide additives that are fed to the *lime kiln.* Stone feed does not include the fuels used in the lime kiln to produce the heat needed to calcine the *limestone* into the *lime product.*

Storage bin means a facility for storage (including surge bins) of *material* prior to further processing or loading.

Transfer point means a point in a conveying operation where the material is transferred to or from a *belt conveyor* (except where the *material* is being transferred to a stockpile).

Truck dumping means the unloading of *material* from movable vehicles designed to transport *material* from one location to another. Movable vehicles include but are not limited to trucks, front end loaders, skip hoists, and railcars.

Vent means an opening through which there is mechanically induced air flow for the purpose of exhausting from a *building* air carrying PM emissions from one or more emission units.

Tables to Subpart AAAAA of Part 63

TABLE 1 TO SUBPART AAAAA OF PART 63.—EMISSION LIMITS

[You must meet each emission limit in the following table that applies to you, as required in § 63.7090(a)]

For . . .	You must meet the following emission limitation . . .
1. All lime kilns and their associated lime coolers at an existing LMP	The sum of the PM emissions from all of the kilns and associated lime coolers must not exceed 0.06 kilograms per megagram (kg/Mg) (0.12 pounds per ton) of stone feed.
2. All lime kilns and their associated lime coolers at a new or reconstructed LMP.	The sum of the PM emissions from all of the kilns and associated lime coolers must not exceed 0.05 kg/Mg (0.10 pounds per ton) of stone feed.
3. Stack emissions from all MPO at a new, reconstructed or existing affected source.	PM emissions must not exceed 0.05 grams per dry standard cubic meter (g/dscm).
4. Stack emissions from all MPO at a new, reconstructed or existing affected source, unless the stack emissions are discharged through a wet scrubber control device.	Emissions must not exceed 7 percent opacity.
5. Fugitive emissions from all MPO at a new, reconstructed or existing affected source, except as provided by item 6 of this Table 1.	Emissions must not exceed 10 percent opacity.
6. All MPO at a new, reconstructed or existing affected source enclosed in a building.	All of the individually affected MPO must comply with the applicable PM and opacity emission limitations in items 3 through 5 of this Table 1, or the building must comply with the following: there must be no visible emissions from the building, except from a vent; and vent emissions must not exceed the stack emissions limitations in items 3 and 4 of this Table 1.

TABLE 1 TO SUBPART AAAAA OF PART 63.—EMISSION LIMITS—Continued

[You must meet each emission limit in the following table that applies to you, as required in § 63.7090(a)]

For . . .	You must meet the following emission limitation . . .
7. Each fabric filter that controls emissions from only an individual, enclosed storage bin.	Emissions must not exceed 7 percent opacity.
8. Each set of multiple storage bins at a new, reconstructed or existing affected source, with combined stack emissions.	You must comply with the emission limits in items 3 and 4 of this Table 1.

TABLE 2 TO SUBPART AAAAA OF PART 63.—OPERATING LIMITS

[You must meet each operating limit in the following table that applies to you, as required in § 63.7090(b)]

For . . .	You must . . .
1. Each lime kiln and each lime cooler (if there is a separate exhaust to the atmosphere from the associated lime cooler) equipped with a fabric filter.	Maintain and operate the fabric filter such that the bag leak detector alarm is not activated and alarm condition does not exist for more than 5 percent of the total operating time in a 6-month period; and comply with the requirements in § 63.7113(d) and (f) and Table 5 to this subpart. In lieu of a bag leak detector, maintain the fabric filter such that the 6-minute average opacity for any 6-minute block period does not exceed 15 percent; and comply with the requirements in § 63.7113(f) and (g) and Table 5 to this subpart.
2. Each lime kiln equipped with a wet scrubber	Maintain the 3-hour rolling average exhaust gas stream pressure drop across the wet scrubber greater than or equal to the pressure drop operating limit established during the most recent PM performance test; and maintain the 3-hour rolling average scrubbing liquid flow rate greater than the flow rate operating limit established during the most recent performance test.
3. Each lime kiln equipped with an electrostatic precipitator	Maintain the 3-hour rolling average current and voltage input to each electrical field of the ESP greater than or equal to the average current and voltage input to each field of the ESP established during the most recent performance test; or, in lieu of complying with these ESP parameter operating limits, install a PM detector and maintain and operate the ESP such that the PM detector alarm is not activated and alarm condition does not exist for more than 5 percent of the total operating time in a 6-month period, and comply with § 63.7113(e); or, maintain the ESP such that the 6-minute average opacity for any 6-minute block period does not exceed 15 percent, and comply with the requirements in § 63.7113(g); and comply with the requirements in § 63.7113(f) and Table 5 to this subpart.
4. Each materials processing operation subject to a PM limit which uses a wet scrubber.	Maintain the 3-hour rolling average exhaust gas stream pressure drop across the wet scrubber greater than or equal to the pressure drop operating limit established during the PM performance test; and maintain the 3-hour rolling average scrubbing liquid flow rate greater than or equal to the flow rate operating limit established during the performance test.
5. All affected sources	Prepare a written OM&M plan; the plan must include the items listed in § 63.7100(d) and the corrective actions to be taken when required in Table 5 to this subpart.
6. Each emission unit equipped with an add-on air pollution control device.	(1) Vent captured emissions through a closed system, except that dilution air may be added to emission streams for the purpose of controlling temperature at the inlet to a fabric filter. (2) Operate each capture/collection system according to the procedures and requirements in the OM&M plan.

TABLE 3 TO SUBPART AAAAA OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

[You must demonstrate initial compliance with each emission limitation that applies to you, according to the following table, as required in § 63.7114]

For . . .	For the emission limitation . . .	You have demonstrated initial compliance, if after following the requirements in § 63.7112 . . .
1. All lime kilns and their associated lime coolers at a new or reconstructed affected source and all lime kilns and their associated lime coolers at an existing affected source.	If the lime cooler associated with the kiln has no separate exhaust to the atmosphere, PM emissions from all kilns and coolers at an existing LMP must not exceed 0.06 kg PM per Mg of stone feed (0.12 lb PM per ton of stone feed); PM emissions from all kilns and coolers at a new or reconstructed LMP must not exceed 0.05 kg PM per Mg of stone feed (0.10 lb PM per ton of stone feed); if a lime cooler associated with a kiln has a separate exhaust to the atmosphere, the sum of all kiln and cooler PM emissions must not exceed 0.06 kg/Mg (0.12 pounds per ton) of stone feed for existing LMP and 0.05 kg/Mg (0.1 pounds per ton) of stone feed for kilns at new or reconstructed LMP.	The kiln outlet PM emissions (and if applicable, summed with the separate cooler PM emissions), based on the PM emissions measured using Method 5 in appendix A to part 60 of this chapter and the stone feed rate measurement, over the period of the initial performance test, do not exceed the emission limit; if the lime kiln is controlled with an ESP (and you are not opting to monitor PM emissions from the ESP with a PM detector or COMS) or wet scrubber, you have a record of the applicable operating parameters over the 3-hour performance test during which emissions did not exceed the emissions limitation; if the lime kiln is controlled by a fabric filter or ESP and you are opting to monitor PM emissions from the ESP with a PM detector or you are opting to monitor PM emissions from the fabric filter with a bag leak detector, you have installed and are operating the monitoring device according to the requirements in § 63.7113(d) or (e), respectively; and if the lime kiln is controlled by a fabric filter or ESP and you are opting to monitor PM emissions using a COMS, you have installed and are operating the monitoring device according to the requirements in § 63.7113(g).
2. Stack emissions from all MPO at a new, reconstructed or existing affected source.	PM emissions must not exceed 0.05 g/dscm	The outlet PM emissions, based on Method 5 or Method 17 in appendix A to part 60 of this chapter, over the period of the initial performance test do not exceed 0.05 g/dscm; and if the emission unit is controlled with a wet scrubber, you have a record of the scrubber's pressure drop and liquid flow rate operating parameters over the 3-hour performance test during which emissions did not exceed the emissions limitation.
3. Stack emissions from all MPO at a new, reconstructed or existing affected source, unless the stack emissions are discharged through a wet scrubber control device.	Emissions must not exceed 7 percent opacity	Each of the thirty 6-minute opacity averages during the initial compliance period, using Method 9 in appendix A to part 60 of this chapter, does not exceed the 7 percent opacity limit.
4. Fugitive emissions from all MPO at a new, reconstructed or existing affected source.	Emissions must not exceed 10 percent opacity	Each of the 6-minute opacity averages during the initial compliance period, using Method 9 in appendix A to part 60 of this chapter, does not exceed the 10 percent opacity limit.
5. All MPO at a new, reconstructed or existing affected source, enclosed in a building.	All of the individually affected MPO must comply with the applicable PM and opacity emission limitations for items 2 through 4 of this Table 3, or the building must comply with the following: there must be no visible emissions from the building, except from a vent, and vent emissions must not exceed the emission limitations in items 2 and 3 of this Table 3.	All the MPO enclosed in the building have demonstrated initial compliance according to the applicable requirements for items 2 through 4 of this Table 3; or if you are complying with the building emission limitations, there are no visible emissions from the building according to item 18 of Table 4 to this subpart and § 63.7112(k), and you demonstrate initial compliance with applicable building vent emissions limitations according to the requirements in items 2 and 3 of this Table 3.
6. Each fabric filter that controls emissions from only an individual storage bin.	Emissions must not exceed 7 percent opacity	Each of the ten 6-minute averages during the 1-hour initial compliance period, using Method 9 in appendix A to part 60 of this chapter, does not exceed the 7 percent opacity limit.
7. Each set of multiple storage bins with combined stack emissions.	You must comply with the emission limitations in items 2 and 3 of this Table 3.	You demonstrate initial compliance according to the requirements in items 2 and 3 of this Table 3.

TABLE 4 TO SUBPART AAAAA OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

[You must conduct each performance test in the following table that applies to you, as required in § 63.7112]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each lime kiln and each associated lime cooler, if there is a separate exhaust to the atmosphere from the associated lime cooler.	Select the location of the sampling port and the number of traverse ports.	Method 1 or 1A of appendix A to part 60 of this chapter; and § 63.7(d)(1)(i).	Sampling sites must be located at the outlet of the control device(s) and prior to any releases to the atmosphere.
2. Each lime kiln and each associated lime cooler, if there is a separate exhaust to the atmosphere from the associated lime cooler.	Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to part 60 of this chapter.	Not applicable.
3. Each lime kiln and each associated lime cooler, if there is a separate exhaust to the atmosphere from the associated lime cooler.	Conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A to part 60 of this chapter.	Not applicable.
4. Each lime kiln and each associated lime cooler, if there is a separate exhaust to the atmosphere from the associated limit cooler.	Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	Not applicable.
5. Each lime kiln and each associated lime cooler, if there is a separate exhaust to the atmosphere from the associated lime cooler, and which uses a negative pressure PM control device.	Measure PM emissions	Method 5 in appendix A to part 60 of this chapter.	Conduct the test(s) at the highest production level reasonably expected to occur; the minimum sampling volume must be 0.85 dscm (30 dscf); if there is a separate lime cooler exhaust to the atmosphere, you must conduct the Method 5 test of the cooler exhaust concurrently with the kiln exhaust test.
6. Each lime kiln and each associated lime cooler, if there is a separate exhaust to the atmosphere from the associated lime cooler, and which uses a positive pressure fabric filter or ESP.	Measure PM emissions	Method 5D in appendix A to part 60 of this chapter.	Conduct the test(s) at the highest production level reasonably expected to occur; if there is a separate lime cooler exhaust to the atmosphere, you must conduct the Method 5 test of the separate cooler exhaust concurrently with the kiln exhaust test.
7. Each lime kiln	Determine the mass rate of stone feed to the kiln during the kiln PM emissions test.	Any suitable device	Calibrate and maintain the device according to manufacturer's instructions; the measuring device used must be accurate to within ±5 percent of the mass rate over its operating range.
8. Each lime kiln equipped with a wet scrubber.	Establish the operating limit for the average gas stream pressure drop across the wet scrubber.	Data for the gas stream pressure drop measurement device during the kiln PM performance test.	The continuous pressure drop measurement device must be accurate within plus or minus 1 percent; you must collect the pressure drop data during the period of the performance test and determine the operating limit according to 63.7112(j).
9. Each lime kiln equipped with a wet scrubber.	Establish the operating limit for the average liquid flow rate to the scrubber.	Data from the liquid flow rate measurement device during the kiln PM performance test.	The continuous scrubbing liquid flow rate measuring device must be accurate within plus or minus 1 percent; you must collect the flow rate data during the period of the performance test and determine the operating limit according to 63.7112(j).
10. Each lime kiln equipped with an ESP, except ESP monitored with a PM detector in lieu of monitoring ESP parameters.	Establish the operating limits for the average current and the average voltage supplied to each field of the ESP.	The ESP operating data during the kiln PM performance test.	You must collect the current and voltage data during the period of the performance test and determine the operating limits for both parameters according to 63.7112(j).

TABLE 4 TO SUBPART AAAAA OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[You must conduct each performance test in the following table that applies to you, as required in § 63.7112]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
11. (a) Each lime kiln equipped with a fabric filter or ESP that is monitored with a PM detector.	Have installed and have operating the bag leak detector or PM detector, respectively prior to the performance test.	Standard operating procedures incorporated into the OM&M plan.	According to the requirements in § 63.7113(d) or (e), respectively.
11. (b) Each lime kiln equipped with a fabric filter or ESP that is monitored with a COMS.	Have installed and have operating the COMS prior to the performance test.	Standard operating procedures incorporated into the OM&M plan and as required by 40 CFR part 63, subpart A, General Provisions and according to PS–1 of appendix B to part 60 of this chapter.	According to the requirements in § 63.7113(g).
12. Each stack emission from an MPO, vent from a building enclosing an MPO, or set of multiple storage bins with combined stack emissions, which is subject to a PM emission limit.	Measure PM emissions	Method 5 or Method 17 in appendix A to part 60 of this chapter.	The sample volume must be at least 1.70 dscm (60 dscf); for Method 5, if the gas stream being sampled is at ambient temperature, the sampling probe and filter may be operated without heaters; and if the gas stream is above ambient temperature, the sampling probe and filter may be operated at a temperature high enough, but no higher than 121°C (250°F), to prevent water condensation on the filter (Method 17 may be used only with exhaust gas temperatures of not more than 250 °F).
13. Each stack emission from an MPO, vent from a building enclosing an MPO, or set of multiple storage bins with combined stack emissions, which is subject to an opacity limit.	Conduct opacity observations	Method 9 in appendix A to part 60 of this chapter.	The test duration must be for at least 3 hours and you must obtain at least thirty, 6-minute averages.
14. Each stack emissions source from an MPO subject to a PM or opacity limit, which uses a wet scrubber.	Establish the average gas stream pressure drop across the wet scrubber.	Data for the gas stream pressure drop measurement device during the MPO stack PM performance test.	The pressure drop measurement device must be accurate within plus or minus 1 percent; you must collect the pressure drop data during the period of the performance test and determine the average level.
15. Each stack emissions source from an MPO subject to a PM or opacity limit, which uses a wet scrubber.	Establish the operating limit for the average liquid flow rate to the scrubber.	Data from the liquid flow rate measurement device during the MPO stack PM performance test.	The continuous scrubbing liquid flow rate measuring device must be accurate within plus or minus 1 percent; you must collect the flow rate data during the period of the performance test and determine the operating limit according to § 63.7112(c).
16. Each fabric filter that controls emissions from only an individual, enclosed, new or existing storage bin.	Conduct opacity observations	Method 9 in appendix A to part 60 of this chapter.	The test duration must be for at least 1 hour and you must obtain ten 6-minute averages.
17. Fugitive emissions from any MPO subject to an opacity limit.	Conduct opacity observations	Method 9 in appendix A to part 60 of this chapter.	The test duration must be for at least 3 hours, but the 3-hour test may be reduced to 1 hour if there are no individual readings greater than 10 percent opacity and there are no more than three readings of 10 percent during the first 1-hour period.

TABLE 4 TO SUBPART AAAAA OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[You must conduct each performance test in the following table that applies to you, as required in § 63.7112]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
18. Each building enclosing any MPO, that is subject to a VE limit.	Conduct VE check	The specifications in § 63.7112(k).	The performance test must be conducted while all affected materials processing operations within the building are operating; the performance test for each affected building must be at least 75 minutes, with each side of the building and roof being observed for at least 15 minutes.

TABLE 5 TO SUBPART AAAAA OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

[You must demonstrate continuous compliance with each operating limit that applies to you, according to the following table, as required in § 63.7121]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
1. Each lime kiln controlled by a wet scrubber ..	Maintain the 3-hour rolling average exhaust gas stream pressure drop across the wet scrubber greater than or equal to the pressure drop operating limit established during the PM performance test; and maintain the 3-hour rolling average scrubbing liquid flow rate greater than or equal to the flow rate operating limit established during the performance test.	Collecting the wet scrubber operating according to all applicable requirements in § 63.7113 and reducing the data according to § 63.7113(a); maintaining the 3-hour rolling average exhaust gas stream pressure drop across the wet scrubber greater than or equal to the pressure drop operating limit established during the PM performance test; and maintaining the 3-hour rolling average scrubbing liquid flow rate greater than or equal to the flow rate operating limit established during the performance test (the continuous scrubbing liquid flow rate measuring device must be accurate, within ±1% and the continuous pressure drop measurement hour rolling device must be accurate within ±1%).
2. Each lime kiln or lime cooler equipped with a fabric filter and using a bag leak detector, and each lime kiln equipped with an ESP using a PM detector in lieu of ESP parameter monitoring.	a. Maintain and operate the fabric filter or ESP such that the bag leak or PM detector alarm, respectively, is not activated and alarm condition does not exist for more than 5 percent of the total operating time in a 6-month period.	(i) Operating the fabric filter or ESP so that the alarm on the bag leak or PM detection system, respectively, is not activated and alarm condition does not exist for more than 5 percent of the total operating time in each 6-month reporting period; and continuously recording the output from the bag leak or PM detection system. (ii) Each time the alarm sounds and the owner or operator initiates corrective actions within 1 hour of the alarm, 1 hour of alarm time will be counted (if the owner or operator takes longer than 1 hour to initiate corrective actions, alarm time will be counted as the actual amount of time taken by the owner or operator to initiate corrective actions); if inspection of the fabric filter or ESP system demonstrates that no corrective actions are necessary, no alarm time will be counted.
3. Each lime kiln equipped with an ESP, except an ESP monitoring PM with a PM detector or COMS.	Maintain the 3-hour rolling average current and voltage input to each electrical field of the ESP greater than or equal to the average current and voltage input to each field of the ESP established during the performance test.	Collecting the ESP operating data according to all applicable requirements in § 63.7113 and reducing the data according to § 63.7113(a), and maintaining the 3-hour rolling average voltage input and current input to each field greater than or equal to voltage input and current input operating limits for each field established during the performance test.

TABLE 5 TO SUBPART AAAAA OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[You must demonstrate continuous compliance with each operating limit that applies to you, according to the following table, as required in § 63.7121]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
4. Each stack emissions source form a MPO subject to an opacity limit, which is controlled by a wet scrubber.	Maintain the 3-hour rolling average exhaust gas stream pressure drop across the wet scrubber greater than or equal to the pressure drop operating limit established during the PM performance test; and maintain the 3-hour rolling average scrubbing liquid flow rate greater than or equal to the flow rate operating limit established during the performance test.	Collecting the wet scrubber operating data according to all applicable requirements in § 63.7113 and reducing the data according to § 63.7113(a); maintaining the 3-hour rolling average exhaust gas stream pressure drop across the wet scrubber greater than or equal to the pressure drop operating limit established during the PM performance test; and maintaining the 3-hour rolling average scrubbing liquid flow rate greater than or equal to the flow rate operating limit established during the performance test (the continuous scrubbing liquid flow rate measuring device must be accurate within ±1% and the continuous pressure drop measurement device must be accurate within ±1%).
5. For each lime kiln or lime cooler equipped with a fabric filter or an ESP that uses a COMS as the monitoring device.	a. Maintain and operate the fabric filter or ESP such that the average opacity for any 6-minute block period does not exceed 15 percent.	i. Installing, maintaining, calibrating and operating a COMS as required by 40 CFR part 63, subpart A, General Provisions and according to PS–1 of appendix B to part 60 of this chapter. ii. Collecting the COMS data at a frequency of at least once every 15 seconds, determining block averages for each 6-minute period and demonstrating for each 6-minute block period the average opacity does not exceed 15 percent.

TABLE 6 TO SUBPART AAAAA OF PART 63.—PERIODIC MONITORING FOR COMPLIANCE WITH OPACITY AND VISIBLE EMISSIONS LIMITS

[You must periodically demonstrate compliance with each opacity and visible emission limit that applies to you, according to the following table, as required in § 63.7121]

For . . .	For the following emission limitation . . .	You must demonstrate ongoing compliance . . .
1. Each MPO subject to an opacity limitation as required in Table 1 to this subpart, or any vents from buildings subject to an opacity limitation.	a. 7–15 percent opacity, depending on the materials processing operation, as required in Table 1 to this subpart.	(i) Conducting a monthly 1-minute VE check of each emission unit in accordance with § 63.7121(e); the check must be conducted while the affected source is in operation. (ii) If no VE are observed in 6 consecutive monthly checks for any emission unit, you may decrease the frequency of VE checking from monthly to semi-annually for that emission unit; if VE are observed during any semiannual check, you must resume VE checking of that emission unit on a monthly basis and maintain that schedule until no VE are observed in 6 consecutive monthly checks. (iii) If no VE are observed during the semi-annual check for any emission unit, you may decrease the frequency of VE checking from semi-annually to annually for that emission unit; if VE are observed during any annual check, you must resume VE checking of that emission unit on a monthly basis and maintain that schedule until no VE are observed in 6 consecutive monthly checks.

TABLE 6 TO SUBPART AAAAA OF PART 63.—PERIODIC MONITORING FOR COMPLIANCE WITH OPACITY AND VISIBLE EMISSIONS LIMITS—Continued

[You must periodically demonstrate compliance with each opacity and visible emission limit that applies to you, according to the following table, as required in § 63.7121]

For . . .	For the following emission limitation . . .	You must demonstrate ongoing compliance . . .
2. Any building subject to a VE limit, according to item 6 of Table 1 to this subpart.	a. No VE	(iv) If VE are observed during any VE check, you must conduct a 6-minute test of opacity in accordance with Method 9 of appendix A to part 60 of this chapter; you must begin the Method 9 test within 1 hour of any observation of VE and the 6-minute opacity reading must not exceed the applicable opacity limit. (i) Conducting a monthly VE check of the building, in accordance with the specifications in § 63.7112(k); the check must be conducted while all the enclosed according MPO are in operation. (ii) The check for each affected building must be at least 5 minutes, with each side of the building and roof being observed for at least 1 minute. (iii) If no VE are observed in 6 consecutive monthly checks of the building, you may decrease the frequency of checking from monthly to semi-annually for that affected source; if VE are observed during any semi-annual check, you must resume checking on a monthly basis and maintain that schedule until no VE are observed in 6 consecutive monthly checks. (iv) If no VE are observed during the semi-annual check, you may decrease the frequency of checking from semi-annually to annually for that affected source; and if VE are observed during any annual check, you must resume checking of that emission unit on a monthly basis and maintain that schedule until no VE are observed in 6 consecutive monthly checks (the source is in compliance if no VE are observed during any of these checks).

TABLE 7 TO SUBPART AAAAA OF PART 63.—REQUIREMENTS FOR REPORTS

[You must submit each report in this table that applies to you, as required in § 63.7131]

You must submit a . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. If there are no deviations from any emission limitations (emission limit, operating limit, opacity limit, and VE limit) that applies to you, a statement that there were no deviations from the emission limitations during the reporting period. b. If there were no periods during which the CMS, including the operating parameter monitoring systems, was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS was out-of-control during the reporting period. c. If you have a deviation from any emission limitation (emission limit, operating limit, opacity limit, and VE) during the reporting period, the report must contain the information in § 63.7131(c). d. If there were periods during which the CMS, including the operating parameter monitoring systems, was out-of-control, as specified in § 63.8(c)(7), the report must contain the information in § 63.7131(e).	Semiannually according to the requirements in § 63.7131(b).

TABLE 7 TO SUBPART AAAAA OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

[You must submit each report in this table that applies to you, as required in § 63.7131]

You must submit a . . .	The report must contain . . .	You must submit the report . . .
	e. If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i).	
2. An immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP.	Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the SSMP.
3. An immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP.	The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority. See § 63.10(d)(5)(ii).

TABLE 8 TO SUBPART AAAAA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Summary of requirement	Am I subject to this requirement?	Explanations
63.1(a)(1)–(4)	Applicability	Yes.	
63.1(a)(5)		No.	
63.1(a)(6)	Applicability	Yes.	
63.1(a)(7)–(a)(9)		No.	
63.1(a)(10)–(a)(14)	Applicability	Yes.	
63.1(b)(1)	Initial Applicability Determination	Yes	§§ 63.7081 and 63.7142 specify additional applicability determination requirements.
63.1(b)(2)		No.	
63.1(b)(3)	Initial Applicability Determination	Yes.	
63.1(c)(1)	Applicability After Standard Established	Yes.	
63.1(c)(2)	Permit Requirements	No	Area sources not subject to subpart AAAAA, except all sources must make initial applicability determination.
63.1(c)(3)		No.	
63.1(c)(4)–(5)	Extensions, Notifications	Yes.	
63.1(d)		No.	
63.1(e)	Applicability of Permit Program	Yes.	
63.2	Definitions		Additional definition in § 63.7143.
63.3(a)–(c)	Units and Abbreviations	Yes.	
63.4(a)(1)–(a)(2)	Prohibited Activities	Yes.	
63.4(a)(3)–(a)(5)		No.	
63.4(b)–(c)	Circumvention, Severability	Yes.	
63.5(a)(1)–(2)	Construction/Reconstruction	Yes.	
63.5(b)(1)	Compliance Dates	Yes.	
63.5(b)(2)		No.	
63.5(b)(3)–(4)	Construction Approval, Applicability	Yes.	
63.5(b)(5)		No.	
63.5(b)(6)	Applicability	Yes.	
63.5(c)		No.	
63.5(d)(1)–(4)	Approval of Construction/Reconstruction	Yes.	
63.5(e)	Approval of Construction/Reconstruction	Yes.	
63.5(f)(1)–(2)	Approval of Construction/Reconstruction	Yes.	
63.6(a)	Compliance for Standards and Maintenance	Yes.	
63.6(b)(1)–(5)	Compliance Dates	Yes.	
63.6(b)(6)		No.	
63.6(b)(7)	Compliance Dates	Yes.	
63.6(c)(1)–(2)	Compliance Dates	Yes.	
63.6(c)(3)–(c)(4)		No.	
63.6(c)(5)	Compliance Dates	Yes.	
63.6(d)		No.	
63.6(e)(1)	Operation & Maintenance	Yes	See also § 63.7100 for OM&M requirements.
63.6(e)(2)		No.	
63.6(e)(3)	Startup, Shutdown Malfunction Plan	Yes.	
63.6(f)(1)–(3)	Compliance with Emission Standards	Yes.	
63.6(g)(1)–(g)(3)	Alternative Standard	Yes.	
63.6(h)(1)–(2)	Opacity/VE Standards	Yes.	
63.6(h)(3)		No.	

TABLE 8 TO SUBPART AAAAA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Summary of requirement	Am I subject to this requirement?	Explanations
63.6(h)(4)–(h)(5)(i)	Opacity/VE Standards	Yes	This requirement only applies to opacity and VE performance checks required in Table 4 to subpart AAAAA.
63.6(h)(5)(ii)–(iii)	Opacity/VE Standards	No	Test durations are specified in subpart AAAAA; subpart AAAAA takes precedence.
63.6(h)(5)(iv)	Opacity/VE Standards	No.	
63.6(h)(5)(v)	Opacity/VE Standards	Yes.	
63.6(h)(6)	Opacity/VE Standards	Yes.	
63.6(h)(7)	COM Use	No	No COM required under subpart AAAAA.
63.6(h)(8)	Compliance with Opacity and VE	Yes.	
63.6(h)(9)	Adjustment of Opacity Limit	Yes.	
63.6(i)(1)–(i)(14)	Extension of Compliance	Yes.	
63.6(i)(15)		No.	
63.6(i)(16)	Extension of Compliance	Yes.	
63.6(j)	Exemption from Compliance	Yes.	
63.7(a)(1)–(a)(3)	Performance Testing Requirements	Yes	§ 63.7110 specifies deadlines; § 63.7112 has additional specific requirements.
63.7(b)	Notification	Yes.	
63.7(c)	Quality Assurance/Test Plan	Yes.	
63.7(d)	Testing Facilities	Yes.	
63.7(e)(1)–(4)	Conduct of Tests	Yes.	
63.7(f)	Alternative Test Method	Yes.	
63.7(g)	Data Analysis	Yes.	
63.7(h)	Waiver of Tests	Yes.	
63.8(a)(1)	Monitoring Requirements	Yes	See also § 63.7113.
63.8(a)(2)	Monitoring	Yes.	
63.8(a)(3)		No.	
63.8(a)(4)	Monitoring	No	Flares not applicable.
63.8(b)(1)–(3)	Conduct of Monitoring	Yes.	
63.8(c)(1)–(3)	CMS Operation/Maintenance	Yes.	
63.8(c)(4)	CMS Requirements	No	See § 63.7121.
63.8(c)(4)(i)–(ii)	Cycle Time for COM and CEMS	No	No COM or CEMS are required under subpart AAAAA; see § 63.7113 for CPMS requirements.
63.8(c)(5)	Minimum COM procedures	No	COM not required.
63.8(c)(6)	CMS Requirements	No	See § 63.7113.
63.8(c)(7)–(8)	CMS Requirements	Yes.	
63.8(d)	Quality Control	No	See § 63.7113.
63.8(e)	Performance Evaluation for CMS	No.	
63.8(f)(1)–(f)(5)	Alternative Monitoring Method	Yes.	
63.8(f)(6)	Alternative to Relative Accuracy test	No.	
63.8(g)(1)–(g)(5)	Data Reduction; Data That Cannot Be Used	No	See data reduction requirements in §§ 63.7120 and 63.7121.
63.9(a)	Notification Requirements	Yes	See also § 63.7130
63.9(b)	Initial Notifications	Yes.	
63.9(c)	Request for Compliance Extension	Yes.	
63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
63.9(e)	Notification of Performance Test	Yes.	
63.9(f)	Notification of VE/Opacity Test	Yes	This requirement only applies to opacity and VE performance tests required in Table 4 to subpart AAAAA. Notification not required for VE/opacity test under Table 6 to subpart AAAAA.
63.9(g)	Additional CMS Notifications	No	Not required for operating parameter monitoring.
63.9(h)(1)–(h)(3)	Notification of Compliance Status	Yes.	
63.9(h)(4)		No..	
63.9(h)(5)–(h)(6)	Notification of Compliance Status	Yes.	
63.9(i)	Adjustment of Deadlines	Yes.	
63.9(j)	Change in Previous Information	Yes.	
63.10(a)	Recordkeeping/Reporting General Requirements.	Yes	See §§ 63.7131 through 63.7133.
63.10(b)(1)–(b)(2)(xii)	Records	Yes.	
63.10(b)(2)(xiii)	Records for Relative Accuracy Test	No.	
63.10(b)(2)(xiv)	Records for Notification	Yes.	
63.10(b)(3)	Applicability Determinations	Yes.	
63.10(c)	Additional CMS Recordkeeping	No	See § 63.7132.
63.10(d)(1)	General Reporting Requirements	Yes.	

TABLE 8 TO SUBPART AAAAA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Summary of requirement	Am I subject to this requirement?	Explanations
63.10(d)(2)	Performance Test Results	Yes.	
63.10(d)(3)	Opacity or VE Observations	Yes	For the periodic monitoring requirements in Table 6 to subpart AAAAA, report according to §63.10(d)(3) only if VE observed and subsequent visual opacity test is required.
63.10(d)(4)	Progress Reports	Yes.	
63.10(d)(5)	Startup, Shutdown, Malfunction Reports	Yes.	
63.10(e)	Additional CMS Reports	No	See specific requirements in subpart AAAAA, see §63.7131.
63.10(f)	Waiver for Recordkeeping/Reporting	Yes.	
63.11(a)–(b)	Control Device Requirements	No	Flares not applicable.
63.12(a)–(c)	State Authority and Delegations	Yes.	
63.13(a)–(c)	State/Regional Addresses	Yes.	
63.14(a)–(b)	Incorporation by Reference	Yes.	ASTM 6420–99 and 6735–01 (see §63.14).
63.15(a)–(b)	Availability of Information	Yes.	

* * * * *

[FR Doc. 02–31233 Filed 12–19–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
December 20, 2002

Part III

Department of Energy

Bonneville Power Administration

2004 Transmission Rate Case; Public Hearing and Opportunities for Public Review and Comment; Notice

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No. TR–04]

2004 Transmission Rate Case; Public Hearing and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of 2004 Transmission Rate Case.

SUMMARY: BPA File No. TR–04. BPA requests that all comments and documents intended to become part of the Official Record in this proceeding contain the file number designation TR–04.

BPA must establish transmission and ancillary service rates to be effective October 1, 2003, when current transmission and ancillary service rates expire. BPA's Transmission Business Line (TBL) held a public workshop in August 2002 to begin discussing with interested parties issues associated with the upcoming 2004 Transmission Rate Case. At the parties' suggestion, TBL and the parties met often over the next two months to negotiate settlement of the rate case. The resulting Settlement Agreement includes transmission and ancillary service rate levels for the Fiscal Years 2004 and 2005 rate period, and addresses a small set of other issues. The Settlement Agreement was sent to TBL customers and interested parties for signature. TBL signed the Settlement Agreement after receiving signed agreements from most TBL customers. TBL's initial rate proposal reflects the terms of the Settlement Agreement.

By this notice, BPA announces its proposed transmission and ancillary service rates to be effective on October 1, 2003, and the commencement of the 2004 Transmission Rate Case.

DATES: Persons wishing to become formal parties to the proceeding must notify BPA in writing of their intention to do so by submitting a petition to intervene at the address provided below. Petitions to intervene must be received by BPA by 4:30 p.m., Pacific Time, on January 8, 2003. Petitions to intervene are discussed further below, in Part III.A.

The Rate Case will begin with a pre-hearing conference at 9 a.m. on January 13, 2003, in Portland, Oregon.

Written comments by non-party participants must be received by March 21, 2003, to be considered in the Record of Decision (ROD).

ADDRESSES:

1. Petitions to intervene should be directed to George Schaaf, Hearing Clerk—LT–7, Bonneville Power Administration, 905 NE 11th Ave., Portland, Oregon, 97232. In addition, a copy of the petition must be served concurrently on BPA's General Counsel and directed to Barry Bennett—LT–7, Office of General Counsel, 905 NE 11th Ave., Portland, Oregon 97232 (see Part III.A for more information).

2. Written comments by participants should be submitted to the Manager, Corporate Communication—DM–7, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon, 97212. You may also e-mail your comments to: *comment@bpa.gov.*

3. The pre-hearing conference will be held in the BPA Rates Hearing Room, 2nd floor, 911 NE 11th Ave., Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Information may also be obtained from Michael Hansen—DM–7, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621; by phone at (503) 230–4328 or toll free at 1–800–622–4519; or via e-mail to *mshansen@bpa.gov.*

You may also contact Dennis Metcalf, Transmission Rate Case Manager, Bonneville Power Administration, P.O. Box 491, Vancouver, Washington, 98666.

SUPPLEMENTARY INFORMATION:

Table of Contents

Part I—Introduction and Procedural Background

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things, publication of notice of the proposed rates in the **Federal Register**; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; opportunity for both oral presentation and written submission of views, data, questions, and arguments related to the proposed rates; and a decision by the Administrator based on the record. BPA's rate proceedings are governed by BPA's Procedures Governing Bonneville Power Administration Rate Hearings, 51 FR 7611 (1986) (Procedures). These procedures implement the statutory section 7(i) requirements. This rate proceeding will be governed by section 1010.9 of the Procedures providing for a general rate proceeding, as modified by the Hearing Officer at the pre-hearing conference. However, BPA will not hold any field hearings to provide for non-party participant oral comments. Section 1010.7 of the Procedures prohibits ex parte communications. BPA imposed ex parte limitations beginning December 10, 2003.

The Bonneville Project Act, 16 U.S.C. 832; the Flood Control Act of 1944, 16 U.S.C. 825s; the Federal Columbia River Transmission System Act, 16 U.S.C. 838; the Northwest Power Act, 16 U.S.C. 839; and the Federal Power Act, 16 U.S.C. 212(i)(1)(B)(ii) provide guidance regarding BPA's ratemaking. The Northwest Power Act requires BPA to set rates that are sufficient to recover, in accordance with sound business principles, the costs of the acquisition, conservation, and transmission of electric power, including amortization of the Federal investment over a reasonable period of years, and the other costs and expenses incurred by the Administrator. The Federal Columbia Transmission System Act requires that the costs of the Federal Columbia River Transmission System be equitably allocated between Federal and non-Federal power utilizing the system. In addition, rates for Federal Energy Regulatory Commission (Commission) ordered transmission service shall be set to permit the recovery of all costs incurred in connection with the transmission service and necessary associated services. BPA's proposed 2004 Transmission and Ancillary Service Rate Schedules are published in Part V below. The Settlement Agreement, and the rate studies and documentation listed in Part IV will be provided to parties at the pre-hearing conference to be held on January 13, 2003, beginning at 9 a.m., at the BPA Rates Hearing Room, 2nd floor, 911 NE 11th Ave., Portland, Oregon.

To request a copy of the Settlement Agreement or any of the studies by telephone, call BPA's document request line, (503) 230–4328 or call toll-free 1–800–622–4519. Please request the document by its listed title. Also state whether you require the accompanying documentation (these can be quite lengthy); otherwise the study alone will be provided. The Settlement Agreement, studies and documentation will also be available on BPA's Web site at *http://www2.transmission.bpa.gov/ratecase.*

A proposed schedule for the formal hearing is provided below. A final schedule will be established by the

Hearing Officer at the pre-hearing conference.

January 13, 2003—Pre-hearing Conference and Filing of BPA Direct Case
January 16, 2003—Clarification
January 21, 2003—Objections to Initial Proposal Due
January 23, 2003—Scheduling Conference
July 28, 2003—Final Record of Decision

If no objections to the TBL's Initial Proposal are filed, it will not be necessary to schedule additional dates for the hearing. In such case, the date for the Final Record of Decision can be adjusted. If any party objects to the Initial Proposal, TBL may continue to defend the Initial Proposal or submit a revised proposal. If objections are filed, the TBL proposes to meet with the parties before the scheduling conference to discuss an appropriate schedule that provides sufficient time for parties that have objected to the Initial Proposal to file a direct case, for the TBL to file a revised proposal, if it so chooses, and for all parties to respond to such revised proposal, if any, and to the testimony of the other parties.

Part II—Purpose and Scope of Hearing

A. Key Components

1. Overview

BPA is committed to marketing its power and transmission services separately in a manner that is modeled after the regulatory initiatives to promote competition in wholesale power markets that were adopted by the Commission in 1996. The Commission's initiatives in Orders 888 [1] and 889 [2] directed public utilities to separate their power merchant functions from their transmission functions; unbundle transmission and ancillary services from wholesale power services; and set separate rates for wholesale generation, transmission, and ancillary services. Although BPA is not required by statute to follow the Commission's regulatory directives, to the extent permitted by law BPA has separated its power and transmission operations and unbundled its rates in a manner consistent with the directives concerning open access transmission service. Accordingly, in 1996 BPA established separate business lines: BPA's Power Business Line (PBL), which performs BPA's wholesale merchant functions, and BPA's Transmission Business Line (TBL), which performs BPA's transmission system operations and reliability functions.

Beginning with the 2002 rate case, BPA has held separate rate proceedings to set power and transmission rates. In the 2002 Power Rate Case, the PBL established power rates to be effective through September 30, 2006. In the 2002 Transmission Rate Case the TBL established transmission rates to be effective through September 30, 2003. The 2004 Transmission Rate Case proceeding will establish transmission rates for the period October 1, 2003, through September 30, 2005.

2. PBL as a Party to the Rate Case

Because BPA has separated its power and transmission functions and sets its power and transmission rates in separate proceedings, it is appropriate that the PBL be a party to the transmission rate proceeding. Accordingly, PBL will be considered a party to the Transmission Rate Case for all purposes under the BPA Procedures. The PBL may file testimony and briefs as a party and will be entitled to all other procedural rights of a party. In particular, the PBL shall be considered a party for purposes of ex parte communications.

B. Settlement Agreement

TBL and most of its customers are parties to a Settlement Agreement that provides for TBL to submit an initial transmission rate proposal that incorporates the provisions of the Settlement Agreement. The Settlement Agreement provides for a 1.5% increase for most transmission and ancillary service rates, and a 2.6% increase for the Network Integration (NT) rate. The additional increase in the NT rate is intended to recover $1 million of redispatch costs. The Settlement Agreement also includes the following additional provisions: a revised rate structure for the Energy Imbalance and Generation Imbalance rates; a reduced Unauthorized Increase Charge; the TBL's commitment to hold a series of public meetings to address certain TBL business practices; TBL's commitment to implement systems no later than October 1, 2003, that allow Point-to-Point Service customers to redirect firm transmission service; and payment by TBL to PBL of $3 million per year for redispatch services described in a revised Attachment K to BPA's Open Access Transmission Tariff (OATT). The Settlement Agreement provides that TBL agrees to file with the Commission, and the signatories to the Settlement Agreement agree not to challenge, the revised Attachment K. BPA will file the revised Attachment K as a proposed amendment to BPA's OATT to be effective as of October 1, 2003. Such filing will not be part of this rate proceeding.

The Settlement Agreement recognizes the possibility that parties to the 2004 Transmission Rate Case that have not signed the Settlement Agreement may object to the TBL's Initial Proposal. If any party objects to the Initial Proposal, TBL may continue to defend the Initial Proposal or submit a revised proposal. If TBL submits a revised proposal, signatories to the Settlement Agreement may contest any aspect of the revised proposal. If TBL does not revise its Initial Proposal, and the Administrator establishes transmission rates consistent with the Initial Proposal, the signatories have agreed not to challenge approval of the rates by FERC, or in any judicial forum.

C. Cost Increases

Over the past few years there has been increasing focus on the reliability and availability of the transmission system. In 1996, a major transmission outage affected the western United States. From 2000 to 2001, California deregulation, drought in California and the Northwest, and bottlenecks in the transmission system all focused the region on system reliability and availability and their effect on energy costs. In order to ensure transmission system reliability and availability, BPA developed an infrastructure plan with objectives to reinforce the transmission system to continue compliance with national reliability standards; maintain and improve the availability of the transmission system; and remove constraints that limit electricity trading and BPA's ability to maintain the system. The TBL capital program increase of about 10 percent in the FY 2004–2005 period over current levels reflects the need for system additions to remove transmission bottlenecks resulting from load growth and the changing generation patterns and uses, and for replacements of older facilities. On the expense side, increased expenses consist primarily of additional interest and depreciation associated with the increased capital program. TBL will hold increases in operating expenses to less than the rate of inflation as decided by the Administrator in the Programs in Review process. The operating expenses include the $3 million per year that the TBL will pay PBL for redispatch services under the OATT, as provided in the Settlement Agreement.

[1] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Pubic Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, FERC Stats. & Regs. para. 31,036 (1996).

[2] Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, FERC Stats. & Regs. para. 31,035 (1996).

D. Overview of the Public Process

1. Transmission Rate Case Customer Workshops

In preparation for the 2004 Transmission Rate Case, TBL held a public workshop for customers and interested parties on August 14, 2002. At that workshop, parties recommended that a rate case settlement be explored. During September and October of 2002, the TBL met regularly with customers and interested parties to negotiate a settlement of transmission and ancillary service rate levels and resolution of other key issues.

2. Program in Review Workshops

In summer and fall 2002, TBL provided an opportunity for public participation and input on TBL program cost levels through the Programs InReview (PIR) process. PIR opened on June 19, 2002, with a widespread notification by mail to about 3000 TBL customers and interested parties. Notices were also published on TBL's external Web site. Five public meetings were held around the region during July 2002. At these public meetings, TBL discussed issues concerning future capital investments in the transmission system and proposed expense levels for transmission system development, operation, maintenance, and reliability for FY 2004–2006. A total of 130 entities attended the regional meetings. TBL also provided informational materials through direct mailings, e-mailings, and publication on TBL's external Web site, and through making staff available to answer questions. In response to a request from customers for additional information and discussion of specific program level issues, a technical meeting was held on September 9, 2002.

The PIR workshops explored customers' and interested parties' views on: (1) Operating and maintaining an aging transmission system; (2) building and maintaining a business framework in a changing energy industry; (3) building a transmission infrastructure to meet load growth, provide stability for existing contracts, ensure transmission system reliability, and integrate new resources; and (4) maintaining a skilled and trained workforce. TBL accepted written and oral comments on proposed transmission capital spending and expenses through September 16, 2002.

After consideration of the customer comments, BPA closed out the PIR public process by issuing a decision from the Administrator on transmission spending levels for the proposed rate period. The Initial Proposal is consistent with the results of the Administrator's decision on transmission program spending levels.

E. Scope of the Transmission Rate Proceeding

Many of the decisions that determine TBL's costs have been or will be made in public processes other than the transmission rate proceeding. This section provides guidance to the Hearing Officer as to those matters that are within the scope of the transmission rate proceeding and those that are outside the scope.

1. Spending Levels

As described above, Programs In Review workshops were held throughout the region to clarify, discuss, and provide the public the opportunity to comment orally and in writing on BPA's proposed capital expenditures and expenses for transmission. After considering all comments, the Administrator closed out the public process by issuing a final decision on spending levels. That decision serves as the basis for the transmission capital and expense levels that are reflected in the transmission rate proposal. In addition, decisions may be made by Congress during this proceeding regarding spending levels for transmission investments and expenses. Pursuant to section 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record any evidence or arguments that seek in any way to challenge the appropriateness or reasonableness of the Administrator's decision on transmission spending levels, including capital and expense budgets reviewed in the Programs in Review public process. If any re-examination of spending levels is necessary, that re-examination will occur outside of the rate proceeding. However, this direction to the Hearing Officer does not cover the following matters: sources of capital for investments, interest rate forecasts, scheduled amortization, forecast depreciation, forecasts of system replacements for repayment studies, interest expense, expense and revenue uncertainties, and risks included in the risk analysis.

2. Issues Decided in Power Rate Proceeding

A number of issues that affect transmission and ancillary service rates have been addressed in BPA's 2002 Power Rate Case. On June 20, 2001, the Administrator established wholesale power rates for the period October 1, 2001, through September 30, 2006. The Commission granted interim approval to the rates on September 28, 2001. In the Power Rate Case, the Administrator made decisions regarding the following: a methodology for functionalizing generation and transmission costs, including a methodology for functionalizing corporate overhead costs to the business lines; costs for generation inputs for ancillary services, including operating reserves, regulating reserve, and reactive power and voltage control from generation resources; the generation costs of station service and remedial action schemes; and the allocation of the costs of generation integration and generator step-up transformers to the business lines. The Administrator also established costs for the delivery of Federal power over third party transmission systems pursuant to General Transfer Agreements.

The Initial Proposal is consistent with the results of the Administrator's decision on these and all other issues decided in the power rate proceeding and will be reflected in all final decisions made in the transmission rate proceeding. The Administrator directs the Hearing Officer to exclude from the record all evidence and argument that seek in any way to address or revisit final decisions that were made in the 2002 Power Rate Case.

3. Revised Attachment K

The Administrator directs the Hearing Officer to exclude from the record all evidence and argument that seek in any way to address revised Attachment K to BPA's OATT. BPA is not required by law to, and does not, amend its OATT in a rate proceeding. BPA will be submitting revised Attachment K to the Commission for approval. A party may raise challenges to revised Attachment K to the Commission at that time, unless it has signed the Settlement Agreement and TBL does not revise its Initial Proposal.

F. National Environmental Policy Act Evaluation

BPA is in the process of assessing the potential environmental effects of its initial rate proposal, as required by the National Environmental Policy Act (NEPA). In the Business Plan Environmental Impact Statement (Business Plan EIS), BPA has previously evaluated the environmental impacts of a range of business structure alternatives that included, among other things, various rate designs for BPA's transmission products and services. In August 1995, the BPA Administrator issued a Record of Decision (Business Plan ROD) that adopted the Market-Driven Alternative from the Business Plan Final EIS completed in June 1995. This alternative was selected because,

among other reasons, it allows BPA to: (1) Recover costs through rates; (2) competitively market BPA's products and services; (3) develop rates that meet customer needs for clarity and simplicity; and (4) continue to meet BPA's legal mandates.

Because this initial rate proposal would likely assist BPA in accomplishing these goals, the proposal appears consistent with these aspects of the Market-Driven Alternative. In addition, this rate proposal is similar to the type of rate designs and resulting rate levels evaluated in the Business Plan EIS, and implementation of this rate proposal thus would not be expected to result in significantly different environmental impacts from those examined for the Market-Driven Alternative in the Business Plan EIS. Therefore, BPA expects that this rate proposal will fall within the scope of the Market-Driven Alternative that was evaluated in the Final Business Plan EIS and adopted in the Business Plan ROD. In the Administrator's Record of Decision regarding this rate proposal, therefore, BPA may tier its decision under NEPA to the Business Plan ROD. Alternatively, BPA may issue another appropriate NEPA document.

Part III—Public Participation

A. Distinguishing Between ''Participants'' and ''Parties''

BPA distinguishes between ''participants in'' and ''parties to'' the hearings. Apart from the formal hearing process, BPA will receive written comments, views, opinions, and information from ''participants,'' who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the pre-hearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are received by March 21, 2003. Written views, supporting information, questions, and arguments should be submitted to BPA's Manager of Corporate Communications at the address listed in the **ADDRESSES** section of this Notice.

Persons wishing to become a party to this transmission rate adjustment proceeding must petition BPA in writing. Petitioners may designate no more than two (2) representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status, and the person's interest in the hearing. Petitions to intervene as parties in the rate proceeding are due to the Hearing Officer by 4:30 p.m., Pacific Time, on January 8, 2003. The petition should be directed to: George Schaaf, Hearing Clerk—LT–7, Bonneville Power Administration, 905 NE., 11th Avenue, Portland, Oregon 97232.

A copy of the petition should be served on BPA's General Counsel and directed to Barry Bennett—LT–7, Office of General Counsel, 905 NE., 11th Ave., Portland, Oregon 97232.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the pre-hearing conference. Any opposition to an intervention petition may instead be made at the pre-hearing conference. Any party, including TBL, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. The Hearing Officer will rule on all timely applications. Late interventions are strongly disfavored. Opposition to a petition to intervene filed after the pre-hearing conference must be received by BPA within two (2) days after service of the petition.

B. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written material entered into the record by TBL and the parties, written comments from participants, and other material accepted into the record by the Hearing Officer. The Hearing Officer will review the record and will certify the record to the Administrator for decision.

The Administrator will develop final rates based on the record, information from the PIR, documents prepared pursuant to the National Environmental Policy Act and other environmental statutes and such other material or information as may have been submitted to or developed by the Administrator. The Administrator will serve copies of the Record of Decision on all parties. BPA will file its rates with the Commission for confirmation and approval after issuance of the Record of Decision.

During the rate proceeding, TBL must continue to meet with customers in the ordinary course of business. To comport with the prohibition on ex parte communications, TBL will provide notice of meetings involving rate proceeding issues to provide an opportunity for participation by all rate proceeding parties. Parties should be aware, however, that such meetings may be held on very short notice.

Part IV—Major Analyses and Summary of Proposal

A. Major Analyses in Studies and Testimony

1. Revenue Requirement Study

This Study includes the calculation of transmission revenue requirements for the FY 2004–2005 rate period and demonstration of cost recovery for the transmission function. The Revenue Requirement Study also includes an analysis of financial risks.

2. Revenue Forecast Testimony

This testimony includes the FY 2004 and 2005 revenue forecast at current 2002 transmission and ancillary service rates and at proposed 2004 rate levels based on forecasted loads and sales during the period.

B. Summary of Proposal

1. Transmission Rates

All of the rates are being increased 1.5% unless otherwise noted. TBL is proposing five rate schedules for the use of its Integrated Network. Except for the changes included in the Settlement Agreement, no other changes from the 2002 transmission rates are being proposed. The proposed transmission rate schedules for use of the Integrated Network are as follows:

• Formula Power Transmission (FPT–04.1 and FPT–04.3) rates—The two FPT rates are based on the cost of specific types of facilities, including a distance component for the use of transmission lines, and are charged on a contract demand basis. Charges for the two required ancillary services, Reactive Supply and Voltage Control from Generation Sources, and Scheduling, System Control and Dispatch, are embedded in the FPT rates. The FPT–04.1 rate is proposed for contracts that allow annual rate adjustments. The FPT–04.3 rate is proposed for contracts that allow a rate change only once every three years. FPT–04.3 customers are given a choice of a 1.5% increase effective October 1, 2003, or a 3% increase effective October 1, 2004.

Although TBL is not offering new FPT contracts, a number of FPT contracts continue in place during the rate period.

• Integration of Resources (IR–04) rate—The IR rate is a postage stamp, contract demand rate. Charges for the two required ancillary services, Reactive Supply and Voltage Control from Generation Sources, and Scheduling, System Control and Dispatch, are embedded in the IR rate. A Short Distance Discount is available when resources are 75 miles or less from load. Although TBL is not offering new IR contracts, a number of IR contracts continue in place during the rate period.

• Network Integration Transmission (NT–04) rate—The NT rate applies to customers taking NT Service under the OATT. The NT rate schedule includes a Load Shaping Charge applied to the customer's total load on the hour of the Monthly Transmission Peak Load, and a Base Charge applied to the customer's total load less Customer-Served Load, if any. Customer-Served Load is the amount of load that the customer agrees to serve on a firm basis without using its NT service. The NT rate is being increased 2.6%.

Point-to-Point (PTP–04) rate—The PTP rate is a contract demand rate that applies to customers taking PTP Service on BPA's network facilities under the OATT. There are separate PTP rates for long-term firm service; short-term firm and non-firm service; and hourly firm and non-firm service. A Short Distance Discount is available for qualified long-term firm service. All short-term PTP rates are downwardly flexible.

In addition to the rates for network use, other proposed transmission rates include:

• Southern Intertie (IS–04) and the Montana Intertie (IM–04) rates are contract demand rates that apply to customers taking PTP Service under the OATT on the Southern Intertie and Montana Intertie. These rates are structured similarly to the PTP rate for service on network facilities.

• The Townsend-Garrison Transmission (TGT–04) rate and the Eastern Intertie rate (IE–02) apply to service under the Montana Intertie agreement.

• The Use-of-Facilities (UFT–04) rate establishes a formula for charging for the use of specific facilities based on the annual cost of those facilities.

• The Advance Funding (AF–04) rate allows TBL to collect the capital and related costs of specific facilities through an advance-funding mechanism.

Because the TGT, UFT, and AF rates are formula rates, the 1.5% increase does not apply to them.

2. Ancillary Services Rates

In addition to the 1.5% rate increase to the Ancillary Services and Control Area Service Rates, TBL proposes to revise other aspects of its Ancillary Services and Control Area Services rates as follows:

• The rates for Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control from Generation Sources Service clarify that the Billing Factor for each rate is based on all PTP transmission service purchased under TBL's OATT regardless of whether the Transmission Customer actually uses (schedules) the transmission. This change is only a clarification, not a substantive change.

• The rates for Energy Imbalance Service, an Ancillary Service, and Generation Imbalance Service, a Control Area Service, establish three Deviation Bands for each rate, and eliminate the 100 mills per kilowatthour penalty charge, except for intentional deviations. In addition, wind resources and new generation resources undergoing testing before commercial operation will be exempt from Deviation Band 3 for Generation Imbalance Service.

• Rates for Operating Reserve—Spinning Reserve Service and Operating Reserve—Supplemental Reserve Service Ancillary Services require generators in the BPA Control Area to pay for or return energy provided by BPA in the event of a contingency involving that generator. The TBL's proposal clarifies that the TBL can direct customers or generators, as applicable, to either purchase operating reserve energy at the applicable market index price, or return the energy at specified times.

• The TBL proposes to revise the definition of Spill Condition to clarify that a Spill Condition, for the purpose of determining a credit or payment for Deviations under the Energy Imbalance or Generation Imbalance rates, exists when spill physically occurs on the BPA system due to lack of load or markets.

3. Other Charges

Other charges that may apply to a customer's transmission service include a Delivery Charge for the use of low-voltage delivery substations, a Power Factor Penalty Charge, a Reservation Fee for customers that delay commencement of long-term firm service, Incremental Rates for transmission requests that require new facilities, and a penalty charge for failure to comply with TBL's curtailment, redispatch or load shedding orders. Except for a 1.5% increase in the Delivery Charge, the TBL is not proposing any changes to these charges.

The TBL is proposing to reduce the Unauthorized Increase Charge to two times the rate applicable to the customer's service, capped at two times the monthly charge for Long-Term Service. The rate proposal also includes a 1.5% increase for the General Transfer Agreement (GTA) Delivery Charge for low-voltage delivery service of Federal power provided under GTA's and other non-Federal transmission service agreements.

C. Issues

The primary issue for the 2004 Transmission Rate Case is whether the Administrator should adopt transmission rates consistent with the Settlement Agreement. Adoption of the Settlement Agreement would avoid a potentially long, expensive, and contentious rate process. It provides certainty to BPA and its customers for two more years, and avoids cost shifts that could result from new cost allocations and rate designs. For TBL, the settlement establishes rates that recover its costs and provide a high probability of making its Treasury payments. For the customers, the transmission rates increase at a pace well below the general rate of inflation.

Part V—2004 Transmission and Ancillary Service Rate Schedules

Schedule FPT–04.1 Formula Power Transmission Rate

Section I. Availability

This schedule supersedes Schedule FPT–02.1 for all firm transmission agreements which provide for application of FPT rates that may be adjusted not more frequently than once a year. This schedule is applicable only to such transmission agreements executed prior to October 1, 1996. It is available for firm transmission of non-Federal power using the Main Grid and/or Secondary System of the Federal Columbia River Transmission System. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm transmission service is required. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to BPA–TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rates

The monthly charge per kilowatt shall be one-twelfth of the sum of the Main Grid Charge and the Secondary System

Charge, as applicable and as specified in the agreement.

A. Main Grid Charge

The Main Grid Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

1. Main Grid Distance: $0.0511 per mile
2. Main Grid Interconnection Terminal: $0.53
3. Main Grid Terminal: $0.59
4. Main Grid Miscellaneous Facilities: $2.91

B. Secondary System Charge

The Secondary System Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

1. Secondary System Distance: $0.5021 per mile
2. Secondary System Transformation: $5.49
3. Secondary System Intermediate Terminal: $2.12
4. Secondary System Interconnection Terminal: $1.50

Section III. Billing Factors

Unless otherwise stated in the agreement, the Billing Factor for the rates specified in section II shall be the largest of:

1. The Transmission Demand;
2. The highest hourly Scheduled Demand for the month; or
3. The Ratchet Demand.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary Services that may be required to support FPT transmission service are available under the ACS rate schedule. FPT customers do not pay the ACS charges for Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control from Generation Sources Service, because these services are included in FPT service.

B. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

C. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

Schedule FPT–04.3 Formula Power Transmission RATE

Section I. Availability

This schedule supersedes Schedule FPT–02.3 for all firm transmission agreements which provide for application of FPT rates that may be adjusted not more frequently than once every three years, except as provided under Section IV.D. This schedule is applicable only to such transmission agreements executed prior to October 1, 1996. It is available for firm transmission of non-Federal power using the Main Grid and/or Secondary System of the Federal Columbia River Transmission System. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm transmission service is required. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to BPA–TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rates

The monthly charge per kilowatt shall be one-twelfth of the sum of the Main Grid Charge and the Secondary System Charge, as applicable and as specified in the agreement. Fiscal Years run from October through September.

A. Fiscal Year 2004 Charges

1. Main Grid Charge

The Main Grid Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

a. Main Grid Distance: $0.0503 per mile
b. Main Grid Interconnection Terminal: $0.52
c. Main Grid Terminal: $0.58
d. Main Grid Miscellaneous Facilities: $2.87

2. Secondary System Charge

The Secondary System Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

a. Secondary System Distance: $0.4947 per mile
b. Secondary System Transformation: $5.41
c. Secondary System Intermediate Terminal: $2.09
d. Secondary System Interconnection Terminal: $1.48

B. Fiscal Year 2005 Charges

1. Main Grid Charge

The Main Grid Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

a. Main Grid Distance: $0.0518 per mile
b. Main Grid Interconnection Terminal: $0.54
c. Main Grid Terminal: $0.60
d. Main Grid Miscellaneous Facilities: $2.96

2. Secondary System Charge

The Secondary System Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

a. Secondary System Distance: $0.5095 per mile
b. Secondary System Transformation: $5.57
c. Secondary System Intermediate Terminal: $2.15
d. Secondary System Interconnection Terminal: $1.52

Section III. Billing Factors

Unless otherwise stated in the agreement, the Billing Factor for the rates specified in section II shall be the largest of:

1. The Transmission Demand;
2. The highest hourly Scheduled Demand for the month; or
3. The Ratchet Demand.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary Services that may be required to support FPT transmission service are available under the ACS rate schedule. FPT customers do not pay the ACS charges for Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control from Generation Sources Service, because these services are included in FPT service.

B. Failure To Comply Penalty

Customers taking transmission service under FPT agreements are subject to the Failure to Comply Penalty specified in section II.B of the GRSPs.

C. Power Factor Penalty

Customers taking transmission service under FPT agreements are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

D. Customer Election of Rate

Customers may elect to pay the rates specified in the FPT–04.1 rate schedule for the entire FY 2004 and FY 2005 rate period instead of the rates specified in Section II of this FPT–04.3 rate schedule. Customers electing to pay the FPT–04.1 rate must notify BPA–TBL of

their election in writing prior to August 1, 2003.

Schedule IR–04 Integration of Resources Rate

Section I. Availability

This schedule supersedes Schedule IR–02 and is available for transmission of non-Federal power for full-year firm transmission service and nonfirm transmission service in amounts not to exceed the customer's total Transmission Demand using Federal Columbia River Transmission System Network and Delivery facilities. This schedule is applicable only to Integration of Resource (IR) agreements executed prior to October 1, 1996. Service under this schedule is subject to BPA–TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rates

The monthly IR rate shall be A or B.

A. Base Rate

$1.261 per kilowatt.

B. Short Distance Discount (SDD) Rate

For Points of Integration (POI) specified in the IR agreement as being short-distance POIs, for which Network facilities are used for a distance of less than 75 circuit miles, the monthly rate per kilowatt shall be the sum of:

1. $0.233, and
2. (0.6 + (0.4 × transmission distance/75)) × $1.028

Where:

The transmission distance is the circuit miles between a designated POI for a generating resource of the customer and a designated Point of Delivery serving load of the customer. Short-distance POIs are determined by BPA–TBL after considering factors in addition to transmission distance.

Section III. Billing Factors

The Billing Factor for rates specified in section II shall be the largest of:

1. The annual Transmission Demand, or, if defined in the agreement, the annual Total Transmission Demand;
2. The highest hourly Scheduled Demand for the month; or
3. The Ratchet Demand.

To the extent that the agreement provides for the IR customer to be billed for transmission service in excess of the Transmission Demand or Total Transmission Demand, as defined in the agreement, at an hourly nonfirm rate, such excess transmission service shall not contribute to the Billing Factor for the IR rates in section II; provided that the IR customer requests such treatment and BPA–TBL approves such request in accordance with the prescribed provisions in the agreement. The rate for transmission service in excess of the Transmission Demand will be pursuant to the Point-to-Point Rate (PTP–04) for Hourly Non-Firm Service.

When the Scheduled Demand or Ratchet Demand is the Billing Factor, short-distance POIs shall be charged the Base Rate specified in section II.A for the amount in excess of Transmission Demand.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary Services that may be required to support IR transmission service are available under the ACS rate schedule. IR customers do not pay the ACS charges for Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control from Generation Sources Service, because these services are included in IR service.

B. Delivery Charge

Customers taking service over Delivery facilities are subject to the Delivery Charge specified in section II.A of the GRSPs.

C. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

D. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

E. Ratchet Demand Relief

Under appropriate circumstances, BPA–TBL may waive or reduce the Ratchet Demand. An IR customer seeking a reduction or waiver must demonstrate good cause for relief, including a demonstration that:

1. The event which resulted in the Ratchet Demand

(a) was the result of an equipment failure or outage that could not reasonably have been foreseen by the customer; and

(b) did not result in harm to BPA–TBL's transmission system or transmission services, or to any other Transmission Customer; or

2. The event which resulted in the Ratchet Demand

(a) was inadvertent;

(b) could not have been avoided by the exercise of reasonable care;

(c) did not result in harm to BPA–TBL's transmission system or transmission services, or to any other Transmission Customer; and

(d) was not part of a recurring pattern of conduct by the IR customer.

If the IR customer causes a Ratchet Demand to be established in a series of months during which the IR customer has not received notice from BPA–TBL of such Ratchet Demands by billing or otherwise, and the Ratchet Demand(s) established after the first Ratchet Demand were due to the lack of notice, then BPA–TBL may establish a Ratchet Demand for the IR customer based on the highest Ratchet Demand in the series. This highest Ratchet Demand will be charged in the month it is established and the following 11 months. All other Ratchet Demands based on such a series (including the Ratchet Demand established in the first month if it is not the highest Ratchet Demand) will be waived.

F. Cost Contribution

The cost components and their contribution to the IR rate (section II.A) are:

1. Transmission Service—81.5%
2. Scheduling, System Control and Dispatch Service—13.2%
3. Reactive Supply and Voltage Control from Generation Sources Service—5.3%

G. Self-Supply of Reactive Supply and Voltage Control From Generation Sources Service

A credit for self-supply of Reactive Supply and Voltage Control from Generation Sources Service will be available for IR customers on an equivalent basis to the credit for PTP Transmission Customers.

Schedule NT–04

Network Integration Rate

Section I. Availability

This schedule supersedes Schedule NT–02. It is available to Transmission Customers taking Network Integration Transmission (NT) Service over Federal Columbia River Transmission System Network and Delivery facilities. Terms and conditions of service are specified in the Open Access Transmission Tariff. This schedule is available also for transmission service of a similar nature that may be ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k). Service under this schedule is subject to BPA–TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rates

The monthly charge will be the sum of A and B.

A. Base Charge

$1.028 per kilowatt per month.

B. Load Shaping Charge

$0.425 per kilowatt per month.

Section III. Billing Factors

A. Base Charge

1. If no Declared Customer-Served Load (CSL) is specified in the customer's NT Service Agreement, the monthly Billing Factor for the Base Charge specified in section II.A shall be the customer's Network Load on the hour of the Monthly Transmission Peak Load.

2. If an amount of Declared CSL is specified in the customer's NT Service Agreement, the monthly Billing Factor for the Base Charge specified in section II.A shall be a or b:

a. For the billing month, if the sum of the Actual CSLs occurring during Heavy Load Hours (HLH) is greater than or equal to 60 percent of the Declared CSL multiplied by the number of HLHs in the billing month, the monthly Billing Factor shall be the customer's Network Load on the hour of the Monthly Transmission Peak Load, less Declared CSL.

b. For the billing month, if the sum of the Actual CSLs occurring during HLH is less than 60 percent of the Declared CSL multiplied by the number of HLHs in the billing month, the monthly Billing Factor shall be the customer's Network Load on the hour of the Monthly Transmission Peak Load. The Billing Factor will be reduced by any megawatts charged the NT Unauthorized Increase Charge under section IV.D. for the month.

Where:

''Declared Customer-Served Load (CSL)'' is the monthly amount in megawatts of the Transmission Customer's Network Load that the Transmission Customer elects to serve on a firm basis from sources internal to its system or over non-Federal transmission facilities or pursuant to contracts other than the Network Integration Service Agreement. The customer's Declared CSL is contractually specified for each month.

''Actual Customer-Served Load (CSL)'' is the actual hourly amount in megawatts of the Network Load that the customer serves on a firm basis from sources internal to its system or over non-Federal transmission facilities or pursuant to contracts other than the Network Integration Service Agreement.

B. Load Shaping Charge

The monthly Billing Factor for the Load Shaping Charge specified in section II.B shall be the Network Load on the hour of the Monthly Transmission Peak Load.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support NT Service are also available under the ACS rate schedule.

B. Delivery Charge

Customers taking NT Service over Delivery facilities are subject to the Delivery Charge specified in section II.A of the GRSPs.

C. Failure To Comply Penalty

Customers taking NT Service are subject to the Failure to Comply Penalty specified in section II.B of the GRSPs.

D. Metering Adjustment

At those Points of Delivery that do not have meters capable of determining the demand on the hour of the Monthly Transmission Peak Load, the Billing Demand shall be calculated by substituting (1) the sum of the highest hourly demand that occurs during the billing month at all Points of Delivery multiplied by 0.79 for (2) Network Load on the hour of the Monthly Transmission Peak Load.

E. Power Factor Penalty

Customers taking PTP Transmission Service are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

F. Unauthorized Increase Charge

If the Network Customer's Actual CSL is less than its Declared CSL, the Unauthorized Increase Charge specified in section II.G of the GRSPs shall be assessed.

G. Direct Assignment Facilities

BPA–TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Network Customer under an applicable rate schedule.

H. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. Network Customers that integrate new Network Resources, new Member Systems, or new native load customers that would require BPA–TBL to construct Network Upgrades shall be subject to the higher of the rates specified in section II or incremental cost rates for service over such facilities. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

I. Rate Adjustment Due to FERC Order Under FPA Sec. 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA sec. 212 specified in section II.D of the GRSPs.

Schedule PTP–04

Point-to-Point Rate

Section I. Availability

This schedule supersedes Schedules PTP–02. It is available to Transmission Customers taking Point-to-Point (PTP) Transmission Service over Federal Columbia River Transmission System (FCRTS) Network and Delivery facilities, and for hourly nonfirm service over such FCRTS facilities for customers with Integration of Resources agreements. Terms and conditions of PTP Transmission Service are specified in the Open Access Transmission Tariff. This schedule is available also for transmission service of a similar nature that may be ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k). Service under this schedule is subject to BPA–TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rates

A. Long-Term Firm PTP Transmission Service $1.028 per kilowatt per month

B. Short-Term Firm and Non-Firm PTP Transmission Service

For each reservation, the rates shall not exceed:

1. Monthly, Weekly, and Daily Firm and Non-Firm Service

a. Days 1 through 5—$0.047 per kilowatt per day

b. Day 6 and beyond—$0.035 per kilowatt per day

2. Hourly Firm and Non-Firm Service—2.96 mills per kilowatthour

Section III. Billing Factors

A. All Firm Service and Monthly, Weekly and Daily Non-Firm Service

The Billing Factor for each rate specified in sections II.A and II.B for all service except Hourly Non-Firm Service shall be the Reserved Capacity, which is the greater of:

1. the sum of the capacity reservations at the Point(s) of Receipt, or

2. the sum of the capacity reservations at the Point(s) of Delivery.

B. Hourly Non-Firm Service

The Billing Factor for the rate specified in section II.B.2 for Hourly Non-Firm Service shall be the scheduled kilowatthours.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS–04 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support PTP Transmission Service on the Network are available under the ACS rate schedule.

B. Delivery Charge

Customers taking PTP Transmission Service over Delivery facilities are subject to the Delivery Charge specified in section II.A of the GRSPs.

C. Failure to Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

D. Interruption of Non-Firm PTP Transmission Service

If daily, weekly or monthly Non-Firm PTP Transmission Service is interrupted, the rates charged under section II.B.1 shall be prorated over the total hours in the day to give credit for the hours of such interruption.

E. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

F. Reservation Fee

Customers who postpone the commencement of Long-Term Firm Point-To-Point Transmission Service by reserving deferred service, or by requesting an extension of the Service Commencement Date, will be subject to the Reservation Fee specified in section II.E of the GRSPs.

G. Short-Distance Discount (SDD)

When a Point of Receipt (POR) and Point of Delivery (POD) use FCRTS facilities for a distance of less than 75 circuit miles and are designated as being short distance in the PTP Service Agreement, the monthly capacity reservations for the relevant POR and POD shall be adjusted, for the purpose of computing the monthly bill for annual service, by the following factor:

0.6 (0.4 × transmission distance/75)

Such adjusted monthly POR and POD reservations shall be used to compute the billing factors in section III.A to calculate the monthly bill for Long-Term Firm PTP Transmission Service. The POD capacity reservation eligible for the SDD may be no larger than the POR capacity reservation. The distance used to calculate the SDD will be contractually specified and based upon path(s) identified in power flow studies. If a set of contiguous PODs qualifies for an SDD, the transmission distance used in the calculation of the SDD shall be between the POR and the POD farthest from the POR.

If the customer requests secondary PORs or PODs that use SDD-adjusted capacity reservations for any period of time during a month, the SDD shall not be applied that month.

H. Unauthorized Increase Charge

Customers who exceed their capacity reservations at any Point of Receipt (POR) or Point of Delivery (POD) shall be subject to the Unauthorized Increase Charge specified in section II.G of the GRSPs.

I. Direct Assignment Facilities

BPA–TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the PTP Transmission Customer under an applicable rate schedule.

J. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require BPA-TBL to construct Network Upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

K. Rate Adjustment Due to FERC Order Under FPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA sec. 212 specified in section II.D of the GRSPs.

Schedule IS–04 Southern Intertie Rate

Section I. Availability

This schedule supersedes Schedule IS–02. It is available to Transmission Customers taking Point-to-Point Transmission Service over Federal Columbia River Transmission System (FCRTS) Southern Intertie facilities. Terms and conditions of service are specified in the Open Access Transmission Tariff or, for customers who executed Southern Intertie agreements with BPA before October 1, 1996, will be as provided in the customer's agreement with BPA. This schedule is available also for transmission service of a similar nature that may be ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k). Service under this schedule is subject to BPA–TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rates

A. Long-Term Firm PTP Transmission Service

$1.176 per kilowatt per month

B. Short-Term Firm and Non-Firm PTP Transmission Service

For each reservation, the rates shall not exceed:

1. Monthly, Weekly, and Daily Firm and Non-Firm Service

a. Days 1 through 5—$0.054 per kilowatt per day

b. Day 6 and beyond—$0.040 per kilowatt per day

2. Hourly Firm and Non-Firm Service—3.39 mills per kilowatthour

Section III. Billing Factors

A. All Firm Service and Monthly, Weekly and Daily Non-Firm Service

The Billing Factor for each rate specified in sections II.A and II.B for all service except Hourly Non-Firm Service shall be the Reserved Capacity, which is the greater of:

1. the sum of the capacity reservations at the Point(s) of Receipt, or

2. the sum of the capacity reservations at the Point(s) of Delivery.

For Southern Intertie transmission agreements executed prior to October 1,

1996, the Billing Factor shall be as specified in the agreement.

B. Hourly Non-Firm Service

The Billing Factor for the rate specified in section II.B.2 for Hourly Non-Firm Service shall be the scheduled kilowatthours.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS–04 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support PTP Transmission Service on the Southern Intertie are available under the ACS rate schedule.

B. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

C. Interruption of Non-Firm PTP Transmission Service

If daily, weekly, or monthly Non-Firm PTP Transmission Service is interrupted, the rates charged under section II.B.1. shall be prorated over the total hours in the day to give credit for the hours of such interruption.

D. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

E. Reservation Fee

Customers who postpone the commencement of Long-Term Firm Point-To-Point Transmission Service by reserving deferred service, or by requesting an extension of their Service Commencement Date, will be subject to the Reservation Fee specified in section II.E of the GRSPs.

F. Unauthorized Increase Charge

Customers who exceed their capacity reservations at any Point of Receipt (POR) or Point of Delivery (POD) shall be subject to the Unauthorized Increase Charge specified in section II.G in the GRSPs.

G. Direct Assignment Facilities

BPA–TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Transmission Customer under an applicable rate schedule.

H. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require BPA–TBL to construct new facilities or upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

I. Rate Adjustment Due to FERC Order Under FPA Sec. 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA sec. 212 specified in section II.D of the GRSPs.

Schedule IM–04 Montana Intertie Rate

Section I. Availability

This schedule supersedes Schedule IM–02. It is available to Transmission Customers taking Point-to-Point (PTP) Transmission Service on BPA's share of Montana Intertie transmission capacity. Terms and conditions of service are specified in the Open Access Transmission Tariff. This schedule is available also for transmission service of a similar nature that may be ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k). Service under this schedule is subject to BPA–TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rates

A. Long-Term Firm PTP Transmission Service

$1.258 per kilowatt per month

B. Short-Term Firm and Non-Firm PTP Transmission Service

For each reservation, the rates shall not exceed:

1. Monthly, Weekly, and Daily Short-Term Firm and Non-Firm Service

a. Days 1 through 5—$0.058 per kilowatt per day

b. Day 6 and beyond—$0.042 per kilowatt per day

2. Hourly Firm and Non-Firm Service—3.61 mills per kilowatthour

Section III. Billing Factors

A. All Firm Service and Monthly, Weekly and Daily Non-Firm Service

The Billing Factor for each rate specified in sections II.A and II.B for all service except Hourly Non-Firm Service shall be the Reserved Capacity, which is the greater of:

1. The sum of the capacity reservations at the Point(s) of Receipt, or

2. The sum of the capacity reservations at the Point(s) of Delivery.

B. Hourly Non-Firm Service

The Billing Factor for the rate specified in section II.B.2 for Hourly Non-Firm Service shall be the scheduled kilowatthours.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS–04 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support PTP Transmission Service on the Montana Intertie are available under the ACS rate schedule.

B. Failure To Comply Penalty Charge

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

C. Interruption of Non-Firm PTP Transmission Service

If daily, weekly, or monthly Non-Firm PTP Transmission Service is interrupted, the rates charged under section II.B.1. shall be prorated over the total hours in the day to give credit for the hours of such interruption.

D. Reservation Fee

Customers who postpone the commencement of Long-Term Firm Point-To-Point Transmission Service by reserving deferred service, or by requesting an extension of their Service Commencement Date, will be subject to the Reservation Fee specified in section II.E of the GRSPs.

E. Unauthorized Increase Charge

Customers who exceed their capacity reservations at any Point of Receipt (POR) or Point of Delivery (POD) shall be subject to the Unauthorized Increase Charge specified in section II.G of the GRSPs.

F. Direct Assignment Facilities

BPA–TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Transmission Customer under an applicable rate schedule.

G. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require BPA–TBL to construct new facilities or upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

H. Rate Adjustment Due to FERC Order Under FPA Sec. 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA sec.212 specified in section II.D of the GRSPs.

Schedule UFT–04 Use-of-Facilities Transmission Rate

Section I. Availability

This schedule supersedes Schedule UFT–02 unless otherwise provided in the agreement, and is available for firm transmission over specified Federal Columbia River Transmission System (FCRTS) facilities. Service under this schedule is subject to BPA–TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge per kilowatt of Transmission Demand/capacity reservations specified in the agreement shall be one-twelfth of the annual cost of capacity of the specified facilities divided by the sum of Transmission Demands/capacity reservations (in kilowatts) using such facilities. Such annual cost shall be determined in accordance with section III.

Section III. Determination of Transmission Rate

A. From time to time, but not more often than once a year, BPA–TBL shall determine the following data for the facilities which have been constructed or otherwise acquired by BPA–TBL and which are used to transmit electric power:

1. The annual cost of the specified FCRTS facilities, as determined from the capital cost of such facilities and annual cost ratios developed from the Federal Columbia River Power System financial statement, including interest and amortization, operation and maintenance, administrative and general, and general plant costs.

The annual cost per kilowatt of facilities listed in the agreement, which are owned by another entity, and used by BPA–TBL for making deliveries to the transferee, shall be determined from the costs specified in the agreement between BPA–TBL and such other entity.

2. The yearly noncoincident peak demands of all users of such facilities or other reasonable measurement of the facilities' peak use.

B. The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the annual cost of the FCRTS facilities used divided by the sum of Transmission Demands/capacity reservations. The annual cost per kilowatt of Transmission Demand/capacity reservation for a facility constructed or otherwise acquired by BPA–TBL shall be determined in accordance with the following formula:

$$\frac{A}{D}$$

Where:

A = The annual cost of such facility as determined in accordance with A.1. above.

D = The sum of the yearly noncoincident demands on the facility as determined in accordance with A.2. above.

1. For facilities used solely by one customer, BPA–TBL may charge a monthly amount equal to the annual cost of such sole-use facilities, determined in accordance with section III.A.1, divided by 12.

2. For facilities used by more than one customer, BPA–TBL may charge a monthly amount equal to the annual cost of such facilities prorated based on relative use of the facilities, divided by 12.

Section IV. Determination of Billing Factors

Unless otherwise stated in the agreement, the Billing Factor shall be the largest of:

A. The Transmission Demand/capacity reservation in kilowatts specified in the agreement;

B. The highest hourly Measured or Scheduled Demand for the month; or

C. The Ratchet Demand.

Section V. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary services that are required to support UFT transmission service are available under the ACS rate schedule.

B. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

C. Power Factor Penalty Charge

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

Schedule AF–04 Advance Funding Rate

Section I. Availability

This schedule supersedes Schedule AF–02 and is available to customers who execute an agreement that provides for BPA–TBL to collect capital and related costs through advance funding or other financial arrangement for specified BPA-owned Federal Columbia River Transmission System (FCRTS) facilities used for:

A. Interconnection or integration of resources and loads to the FCRTS;

B. Upgrades, replacements, or reinforcements of the FCRTS for transmission service; or

C. Other transmission service arrangements, as determined by BPA–TBL.

Service under this schedule is subject to BPA–TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The charge is the sum of the actual capital and related costs for specified FCRTS facilities, as provided in the agreement. Such actual capital and related costs include, but are not limited to, costs of design, materials, construction, overhead, spare parts, and all incidental costs necessary to provide service as identified in the agreement.

Section III. Payment

A. Advance Payment

Payment to BPA–TBL shall be specified in the agreement as either:

1. A lump sum advance payment;

2. Advance payments pursuant to a schedule of progress payments; or

3. Other payment arrangement, as determined by BPA–TBL.

Such advance payment or payments shall be based on an estimate of the capital and related costs for the specified FCRTS facilities as provided in the agreement.

B. Adjustment to Advance Payment

BPA–TBL shall determine the actual capital and related costs of the specified FCRTS facilities as soon as practicable after the date of commercial operation, as determined by BPA–TBL. The customer will either receive a refund from BPA–TBL or be billed for additional payment for the difference between the advance payment and the actual capital and related costs.

Schedule TGT–04 Townsend-Garrison Transmission Rate

Section I. Availability

This schedule supersedes Schedule TGT–02 and is available to Companies that are parties to the Montana Intertie Agreement (Contract No. DE–MS79–81BP90210, as amended) which provides for firm transmission over BPA–TBL's section (Garrison to Townsend) of the Montana Intertie. Service under this schedule is subject to BPA–TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge shall be one-twelfth of the sum of the annual charges listed below, as applicable and as specified in the agreements for firm transmission. The Townsend-Garrison 500-kV lines and associated terminal, line compensation, and communication facilities are a separately identified portion of the Federal Transmission System. Annual revenues plus credits for government use should equal annual costs of the facilities, but in any given year there may be either a surplus or a deficit. Such surpluses or deficits for any year shall be accounted for in the computation of annual costs for succeeding years. Revenue requirements for firm transmission use will be decreased by any revenues received from nonfirm use and credits for all government use. The general methodology for determining the firm rate is to divide the revenue requirement by the total firm capacity requirements. Therefore, the higher the total capacity requirements, the lower will be the unit rate.

If the government provides firm transmission service in its section of the Montana (Eastern) Intertie in exchange for firm transmission service in a customer's section of the Montana Intertie, the payment by the government for such transmission services provided by such customer will be made in the form of a credit in the calculation of the Intertie Charge for such customer. During an estimated 1- to 3-year period following the commercial operation of the third generating unit at the Colstrip Thermal Generating Plant at Colstrip, Montana, the capability of the Federal Transmission System west of Garrison Substation may be different from the long-term situation. It may not be possible to complete the extension of the 500-kV portion of the Federal Transmission System to Garrison by such commercial operation date. In such event, the 500/230 kV transformer will be an essential extension of the Townsend-Garrison Intertie facilities, and the annual costs of such transformer will be included in the calculation of the Intertie Charge.

However, starting 1 month after extension to Garrison of the 500-kV portion of the Federal Transmission System, the annual costs of such transformer will no longer be included in the calculation of the Intertie Charge.

A. Nonfirm Transmission Charge

This charge will be filed as a separate rate schedule, the Eastern Intertie (IE) rate, and revenues received thereunder will reduce the amount of revenue to be collected under the Intertie Charge below.

B. Intertie Charge for Firm Transmission Service

$$\text{Intertie Charge} = [((\text{TAC}/12) - \text{NFR}) \times \frac{(\text{CR} - \text{EC})}{\text{TCR}}$$

Section III. Definitions

A. TAC = Total Annual Costs of facilities associated with the Townsend-Garrison 500-kV Transmission line including terminals, and prior to extension of the 500-kV portion of the Federal Transmission System to Garrison, the 500/230 kV transformer at Garrison. Such annual costs are the total of: (1) Interest and amortization of associated Federal investment and the appropriate allocation of general plant costs; (2) operation and maintenance costs; (3) allowance for BPA's general administrative costs which are appropriately allocable to such facilities, and (4) payments made pursuant to section 7(m) of Public Law 96–501 with respect to these facilities. Total Annual Costs shall be adjusted to reflect reductions to unpaid total costs as a result of any amounts received, under agreements for firm transmission service over the Montana Intertie, by the government on account of any reduction in Transmission Demand, termination or partial termination of any such agreement or otherwise to compensate BPA for the unamortized investment, annual cost, removal, salvage, or other cost related to such facilities.

B. NFR = Nonfirm Revenues, which are equal to: (1) The product of the Nonfirm Transmission Charge described in II(A) above, and the total nonfirm energy transmitted over the Townsend-Garrison line segment under such charge for such month; plus (2) the product of the Nonfirm Transmission Charge and the total nonfirm energy transmitted in either direction by the Government over the Townsend-Garrison line segment for such month.

C. CR = Capacity Requirement of a customer on the Townsend-Garrison 500-kV transmission facilities as specified in its firm transmission agreement.

D. TCR = Total Capacity Requirement on the Townsend-Garrison 500-kV transmission facilities as calculated by adding (1) the sum of all Capacity Requirements (CR) specified in transmission agreements described in section I; and (2) the Government's firm capacity requirement. The Government's firm capacity requirement shall be no less than the total of the amounts, if any, specified in firm transmission agreements for use of the Montana Intertie.

E. EC = Exchange Credit for each customer which is the product of: (1) The ratio of investment in the Townsend-Broadview 500-kV transmission line to the investment in the Townsend-Garrison 500-kV transmission line; and (2) the capacity which the Government obtains in the Townsend-Broadview 500-kV transmission line through exchange with such customer. If no exchange is in effect with a customer, the value of EC for such customer shall be zero.

Schedule IE–04 Eastern Intertie Rate

Section I. Availability

This schedule supersedes IE–02 and is available to Companies that are parties to the Montana Intertie Agreement (Contract No. DE–MS79–81BP90210, as amended), for nonfirm transmission service on the portion of Eastern Intertie capacity above BPA–TBL's firm transmission rights. Service

under this schedule is subject to BPA–TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The rate shall not exceed 1.38 mills per kilowatthour.

Section III. Billing Factors

The Billing Factor shall be the scheduled kilowatthours, unless otherwise specified in the agreement.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary services that may be required to support IE transmission service are available under the ACS rate schedule.

B. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty specified in section II.B of the GRSPs.

Schedule ACS–04 Ancillary Services and Control Area Services Rate

Section I. Availability

This schedule supersedes Schedule ACS–02. It is available to all Transmission Customers taking service under the Open Access Transmission Tariff and other contractual arrangements. This schedule is available also for transmission service of a similar nature that may be ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k). Service under this schedule is subject to BPA–TBL's General Rate Schedule Provisions (GRSPs).

Ancillary Services are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service. The Transmission Provider is required to provide, and the Transmission Customer is required to purchase, the following Ancillary Services: (a) Scheduling, System Control and Dispatch, and (b) Reactive Supply and Voltage Control from Generation Sources.

The Transmission Provider is required to offer to provide the following Ancillary Services only to the Transmission Customer serving load within the Transmission Provider's Control Area: (a) Regulation and Frequency Response and (b) Energy Imbalance. The Transmission Customer serving load within the Transmission Provider's Control Area is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply. The Transmission Provider is required to offer to provide (a) Operating Reserve—Spinning, and (b) Operating Reserve—Supplemental to the Transmission Customer serving load with generation located in the Transmission Provider's Control Area. The Transmission Customer serving load with generation located in the Transmission Provider's Control Area is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply. The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired the Ancillary Services from another source. The Transmission Customer must list in its Application which Ancillary Services it will purchase from the Transmission Provider.

Ancillary Service rates available under this rate schedule are:

1. Scheduling, System Control, and Dispatch Service
2. Reactive Supply and Voltage Control from Generation Sources Service
3. Regulation and Frequency Response Service
4. Energy Imbalance Service
5. Operating Reserve—Spinning Reserve Service
6. Operating Reserve—Supplemental Reserve Service

Control Area Services are available to meet the Reliability Obligations of a party with resources or loads in the BPA Control Area. A party that is not satisfying all of its Reliability Obligations through the purchase or self-provision of Ancillary Services must purchase Control Area Services to meet its Reliability Obligations. Control Area Services are also available to parties with resources or loads in the BPA Control Area that have Reliability Obligations, but do not have a transmission agreement with BPA. Reliability Obligations for resources or loads in the BPA Control Area shall be determined consistent with the applicable North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC), and Northwest Power Pool (NWPP) criteria.

Control Area Service rates available under this rate schedule are:

1. Regulation and Frequency Response Service
2. Generation Imbalance Service
3. Operating Reserve—Spinning Reserve Service
4. Operating Reserve—Supplemental Reserve Service

Section II. Ancillary Service Rates

A. Scheduling, System Control and Dispatch Service

The rates below apply to Transmission Customers taking Scheduling, System Control and Dispatch Service from BPA–TBL. These rates apply to both firm and non-firm transmission service. Transmission arrangements on the Network, on the Southern Intertie, and on the Montana Intertie are each charged separately for Scheduling, System Control and Dispatch Service.

1. Rates

a. Long-Term Firm PTP Transmission Service and NT Service.—The rate shall not exceed $0.166 per kilowatt per month.

b. Short-Term Firm and Non-Firm PTP Transmission Service.—For each reservation, the rates shall not exceed:

(1) Monthly, Weekly, and Daily Firm and Non-Firm Service

(a) Days 1 through 5—$0.008 per kilowatt per day

(b) Day 6 and beyond—$0.005 per kilowatt per day

(2) Hourly Firm and Non-Firm Service—

The rate shall not exceed 0.48 mills per kilowatthour.

2. Billing Factors

a. Point-To-Point Transmission Service.—For Transmission Customers taking Point-to-Point Transmission Service (PTP, IS, and IM rates), the Billing Factor for each rate specified in section 1.a, 1.b(1), and for Hourly Firm PTP Transmission Service specified in 1.b(2) shall be the Reserved Capacity, which is the greater of:

1. the sum of the capacity reservations at the Point(s) of Receipt, or

2. the sum of the capacity reservations at the Point(s) of Delivery.

The Reserved Capacity for Firm PTP Transmission Service shall not be adjusted for any Short-Distance Discounts or for any modifications on a non-firm basis in determining the Scheduling, System Control and Dispatch Service Billing Factor.

The Billing Factor for the rate specified in section 1.b(2) for Hourly Non-Firm Service shall be the scheduled kilowatthours.

These Billing Factors apply to all PTP transmission service under the Open Access Transmission Tariff regardless of whether the Transmission Customer actually uses (schedules) the transmission.

b. Network Integration Transmission Service.—For Transmission Customers taking Network Integration

Transmission Service, the Billing Factor for the rate specified in section 1.a. shall equal the NT Base Charge Billing Factor determined pursuant to section III.A of the Network Integration Rate Schedule (NT–04).

Section II. Ancillary Service Rates

B. Reactive Supply and Voltage Control from Generation Sources Service

The rates below apply to Transmission Customers taking Reactive Supply and Voltage Control from Generation Sources Service from BPA–TBL. These rates apply to both firm and non-firm transmission service. Transmission arrangements on the Network, on the Southern Intertie, and on the Montana Intertie are each charged separately for Reactive Supply and Voltage Control from Generation Sources Service.

1. Rates

a. Long-Term Firm PTP Transmission Service and NT Service.—The rate shall not exceed $0.067 per kilowatt per month.

b. Short-Term Firm and Non-Firm PTP Transmission Service.—For each reservation, the rates shall not exceed:

(1) Monthly, Weekly, and Daily Firm and Nonfirm Service

(a) Days 1 through 5—$0.003 per kilowatt per day

(b) Day 6 and beyond—$0.002 per kilowatt per day

(2) Hourly Firm and Non-Firm Service.—The rate shall not exceed 0.19 mills per kilowatthour.

2. Billing Factors

a. Point-To-Point Transmission Service.—For Transmission Customers taking Point-to-Point Transmission Service (PTP, IS, and IM rates), the Billing Factor for each rate specified in section 1.a, 1.b(1) and for Hourly Firm PTP Transmission Service specified in 1.b(2) shall be the Reserved Capacity, which is the greater of:

1. The sum of the capacity reservations at the Point(s) of Receipt, or

2. The sum of the capacity reservations at the Point(s) of Delivery.

The Reserved Capacity for Firm PTP Transmission Service shall not be adjusted for any Short-Distance Discount or for any modifications on a non-firm basis in determining the Reactive Supply and Voltage Control from Generation Sources Service Billing Factor.

The Billing Factor for the rate specified in section 1.b(2) for Hourly Non-Firm Service shall be the scheduled kilowatthours.

These Billing Factors apply to all PTP transmission service under the Open Access Transmission Tariff regardless of whether the Transmission Customer actually uses (schedules) the transmission.

b. Network Integration Transmission Service.—For Transmission Customers taking Network Integration Transmission Service, the Billing Factor for the rate specified in section 1.a. shall equal the NT Base Charge Billing Factor determined pursuant to section III.A of the Network Integration Rate Schedule (NT–04).

c. Adjustment for Self-Supply.—The Billing Factors in sections 2.a. and 2.b. above may be reduced as specified in the Transmission Customer's Service Agreement to the extent the Transmission Customer demonstrates to BPA–TBL's satisfaction that it can self-provide Reactive Supply and Voltage Control from Generation Sources Service.

Section II. Ancillary Service Rates

C. Regulation and Frequency Response Service

The rate below for Regulation and Frequency Response Service applies to Transmission Customers serving loads in the BPA Control Area. Regulation and Frequency Response Service provides the generation capability to follow the moment-to-moment variations of loads in the BPA Control Area and maintain the power system frequency at 60 Hz in conformance with NERC and WECC reliability standards.

1. Rate

The rate shall not exceed 0.30 mills per kilowatthour.

2. Billing Factor

The Billing Factor is the customer's total load in the BPA Control Area, in kilowatthours.

Section II. Ancillary Service Rates

D. Energy Imbalance Service

The rates below apply to Transmission Customers taking Energy Imbalance Service from BPA–TBL. Energy Imbalance Service is taken when there is a difference between scheduled and actual energy delivered to a load in the BPA Control Area during a schedule hour.

1. Rates

a. Imbalances Within Deviation Band 1.—Deviation Band 1 applies to deviations that are less than or equal to: (i) ±1.5% of the scheduled amount of energy, or (ii) ±2 MW, whichever is larger in absolute value. BPA–TBL will maintain deviation accounts showing the net Energy Imbalance (the sum of positive and negative deviations from schedule for each hour) for Heavy Load Hour (HLH) and Light Load Hour (LLH) periods. Return energy may be scheduled at any time during the month to bring the deviation account balances to zero at the end of each month. BPA–TBL will approve the hourly schedules of return energy. The customer shall make the arrangements and submit the schedule for the balancing transaction.

The following rates will be applied when a deviation balance remains at the end of the month:

(i) When the monthly net energy (determined for HLH and LLH periods) taken by the Transmission Customer is greater than the energy scheduled, the charge is BPA's incremental cost based on the applicable average HLH and average LLH incremental cost for the month.

(ii) When the monthly net energy (determined for HLH and LLH periods) taken by the Transmission Customer is less than the energy scheduled, the credit is BPA's incremental cost based on the applicable average HLH and LLH incremental cost for the month.

b. Imbalances Within Deviation Band 2.—Deviation Band 2 applies to the portion of the deviation (i) greater than ±1.5% of the scheduled amount of energy or ±2 MW, whichever is larger in absolute value, (ii) up to and including ±7.5% of the scheduled amount of energy or ±10 MW, whichever is larger in absolute value.

(i) When energy taken by the Transmission Customer in a schedule hour is greater than the energy scheduled, the charge is 110% of BPA's incremental cost.

(ii) When energy taken by the Transmission Customer in a schedule hour is less than the scheduled amount, the credit is 90% of BPA's incremental cost.

c. Imbalances Within Deviation Band 3.—Deviation Band 3 applies to the portion of the deviation (i) greater than ±7.5% of the scheduled amount of energy, or (ii) greater than ±10 MW of the scheduled amount of energy, whichever is larger in absolute value.

(I) When energy taken by the Transmission Customer in a schedule hour is greater than the energy scheduled, the charge is 125% of BPA's highest incremental cost that occurs during the that day. The highest daily incremental cost shall be determined separately for HLH and LLH.

(ii) When energy taken by the Transmission Customer in a schedule hour is less than the scheduled amount, the credit is 75% of BPA's lowest incremental cost that occurs during that day. The lowest daily incremental cost

shall be determined separately for HLH and LLH.

2. Other Rate Provisions

a. BPA Incremental Cost.—BPA's incremental cost will be based on an hourly energy index in the PNW. If no adequate hourly index exists, an alternative index will be used. The index to be used will be posted on the OASIS at least 30 days prior to use for determining the BPA incremental cost and will not be changed more often than once per year unless BPA–TBL determines that the existing index is no longer a reliable price index.

b. Spill Conditions.—For any day that the Federal System is in a Spill Condition, no credit is given for negative deviations (actual energy delivered is less than scheduled) for any hour of that day.

c. Intentional Deviation.—For any hour(s) that an imbalance is determined by BPA–TBL to be an Intentional Deviation:

(1) No credit is given when energy taken is less than the scheduled energy.

(2) When energy taken exceeds the scheduled energy, the charge is the greater of: (i) 125% of BPA's highest incremental cost that occurs during that day, or (ii) 100 mills per kilowatthour.

Section II. Ancillary Service Rates

E. Operating Reserve—Spinning Reserve Service

The rates below apply to Transmission Customers taking Operating Reserve—Spinning Reserve Service from BPA–TBL and to generators in the BPA Control Area for settlement of energy deliveries. Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. For a Transmission Customer's load (located inside or outside of the BPA Control Area) served by generation located in the BPA Control Area, the Transmission Customer's Spinning Reserve Requirement shall be determined consistent with applicable NERC, WECC and NWPP standards.

1. Rates

a. The rate shall not exceed 8.39 mills per kilowatthour of the Transmission Customer's Spinning Reserve Requirement.

b. For energy delivered, the generator shall, as directed by BPA–TBL, either:

(i) Purchase the energy at the hourly market index price applicable at the time of occurrence, or

(ii) Return the energy at the times specified by BPA–TBL.

2. Billing Factors

a. The Billing Factor for Spinning Reserve Service is determined in accordance with applicable WECC and NWPP standards. Application of current standards establish a minimum Spinning Reserve Requirement equal to the sum of:

(i) Two and a half percent (2.5%) of the hydroelectric generation dedicated to the Transmission Customer's firm load responsibility; and

(ii) Three and a half percent (3.5%) of non-hydroelectric generation dedicated to the Transmission Customer's firm load responsibility.

b. The Billing Factor for energy delivered when Spinning Reserve Service is called upon is the energy delivered, in kilowatthours.

Section II. Ancillary Service Rates

F. Operating Reserve—Supplemental Reserve Service

The rates below apply to Transmission Customers taking Operating Reserve—Supplemental Reserve Service from BPA–TBL and to generators in the BPA Control Area for settlement of energy deliveries. Supplemental Reserve Service is available within a short period of time to serve load in the event of a system contingency. For a Transmission Customer's load (located inside or outside the BPA Control Area) served by generation located in the BPA Control Area, the Transmission Customer's Supplemental Reserve Requirement shall be determined consistent with applicable NERC, WECC and NWPP standards.

1. Rates

a. The rate shall not exceed 8.39 mills per kilowatthour of Supplemental Reserve Requirement.

b. For energy delivered, the Transmission Customer (for interruptible imports only) or the generator shall, as directed by BPA–TBL, either:

(i) Purchase the energy at the hourly market index price applicable at the time of occurrence, or

(ii) Return the energy at the times specified by BPA–TBL.

The Transmission Customer shall be responsible for the settlement of delivered energy associated with interruptible imports (see section 2.a(iii)). The generator shall be responsible for the settlement of delivered energy associated with generation in the BPA Control Area.

2. Billing Factors

a. The Billing Factor for Supplemental Reserve Service is determined in accordance with applicable WECC and NWPP standards. Application of current standards establish a minimum Supplemental Reserve Requirement equal to the sum of:

(i) Two and one half percent (2.5%) of the hydroelectric generation dedicated to the Transmission Customer's firm load responsibility, plus

(ii) Three and one half percent (3.5%) of non-hydroelectric generation dedicated to the Transmission Customer's firm load responsibility, plus

(iii) Any power scheduled into the BPA Control Area that can be interrupted on ten (10) minutes' notice.

b. The Billing Factor for energy delivered when Supplemental Reserve Service is called upon is the energy delivered, in kilowatthours.

Section III. Control Area Service Rates

A. Regulation and Frequency Response Service

The rate below applies to all loads in the BPA Control Area that are receiving Regulation and Frequency Response Service from the BPA Control Area, and such Regulation and Frequency Response Service is not provided for under a BPA–TBL transmission agreement. Regulation and Frequency Response Service provides the generation capability to follow the moment-to-moment variations of loads in the BPA Control Area and maintain the power system frequency at 60 Hz in conformance with NERC and WECC reliability standards.

1. Rate

The rate shall not exceed 0.30 mills per kilowatthour.

2. Billing Factor

The Billing Factor is the customer's total load in the BPA Control Area, in kilowatthours.

Section III. Control Area Service Rates

B. Generation Imbalance Service

The rates below apply to generation resources in the BPA Control Area if Generation Imbalance Service is provided for in an interconnection agreement or other arrangement. Generation Imbalance Service is taken when there is a difference between scheduled and actual energy delivered from generation resources in the BPA Control Area during a schedule hour.

1. Rates

a. Imbalances Within Deviation Band 1.—Deviation Band 1 applies to deviations that are less than or equal to:

(I) ± 1.5% of the scheduled amount of energy, or (ii) ± 2 MW, whichever is larger in absolute value. BPA–TBL will maintain deviation accounts showing the net Generation Imbalance (the sum of positive and negative deviations from schedule for each hour) for Heavy Load Hour (HLH) and Light Load Hour (LLH) periods. Return energy may be scheduled at any time during the month to bring the deviation account balances to zero at the end of each month. BPA–TBL will approve the hourly schedules of return energy. The customer shall make the arrangements and submit the schedule for the balancing transaction.

The following rates will be applied when a deviation balance remains at the end of the month:

(i) When the monthly net energy (determined for HLH and LLH periods) delivered from a generation resource is less than the energy scheduled, the charge is BPA's incremental cost based on the applicable average HLH and average LLH incremental cost for the month.

(ii) When the monthly net energy (determined for HLH and LLH periods) delivered from a generation resource is greater than the energy scheduled, the credit is BPA's incremental cost based on the applicable average HLH and LLH incremental cost for the month.

b. Imbalances Within Deviation Band 2.—Deviation Band 2 applies to the portion of the deviation (I) greater than ± 1.5% of the scheduled amount of energy or ±2MW, whichever is larger in absolute value, (ii) up to and including ±7.5% of the scheduled amount of energy or ±10 MW, whichever is larger in absolute value.

(i) When energy delivered in a schedule hour from the generation resource is less than the energy scheduled, the charge is 110% of BPA's incremental cost.

(ii) When energy delivered from the generation resource is greater than the scheduled amount, the credit is 90% of BPA's incremental cost.

c. Imbalances Within Deviation Band 3.—Deviation Band 3 applies to the portion of the deviation (i) greater than ±7.5% of the scheduled amount of energy, or (ii) greater than ±10 MW of the scheduled amount of energy, whichever is larger in absolute value.

(i) When energy delivered in a schedule hour from the generation resource is less than the energy scheduled, the charge is 125% of BPA's highest incremental cost that occurs during that day. The highest daily incremental cost shall be determined separately for HLH and LLH.

(ii) When energy delivered from the generation resource is greater than the scheduled amount, the credit is 75% of BPA's lowest incremental cost that occurs during that day. The lowest daily incremental cost shall be determined separately for HLH and LLH.

2. Other Rate Provisions

a. BPA Incremental Cost.—BPA's incremental cost will be based on an hourly energy index in the PNW. If no adequate hourly index exists, an alternative index will be used. The index to be used will be posted on the OASIS at least 30 days prior to use for determining the BPA incremental cost and will not be changed more often than once per year unless BPA–TBL determines that the existing index is no longer a reliable price index.

b. Spill Conditions.—For any day that the Federal System is in a Spill Condition, no credit is given for negative deviations (actual generation greater than schedules) for any hour of that day.

c. Intentional Deviation.—No credit is given for negative deviations (actual generation greater than schedules) for any hour(s) that the imbalance is an Intentional Deviation (as determined by BPA–TBL).

For positive deviations (actual generation less than schedules) which are determined by BPA–TBL to be Intentional Deviations, the charge is the greater of: (I) 125% of BPA's highest incremental cost that occurs during that day, or (ii) 100 mills per kilowatthour.

d. Exemptions from Deviation Band 3.—The following resources are not subject to Deviation Band 3:

(i) wind resources; and

(ii) new generation resources undergoing testing before commercial operation for up to 90 days.

All such deviations greater than ±1.5% or ±2 MW will be charged consistent with section 1.b., Imbalances Within Deviation Band 2.

Section III. Control Area Service Rates

C. Operating Reserve—Spinning Reserve Service

Operating Reserve—Spinning Reserve Service must be purchased by a party with generation in the BPA Control Area that is receiving this service from BPA–TBL, and such Spinning Reserve Service is not provided for under a BPA–TBL transmission agreement. Service is being received if there are no other qualifying resources providing this required reserve service in conformance with NERC, WECC and NWPP standards.

1. Rates

a. The rate shall not exceed 8.39 mills per kilowatthour of Spinning Reserve Requirement

b. For energy delivered, the customer shall, as directed by BPA–TBL, either:

(i) Purchase the energy at the hourly market index price applicable at the time of occurrence, or

(ii) Return the energy at the times specified by BPA–TBL.

2. Billing Factors

a. The Billing Factor for Spinning Reserve Service is determined in accordance with applicable WECC and NWPP standards. Application of current standards establish a minimum Spinning Reserve Requirement equal to the sum of:

(i) Two and one half percent (2.5%) of the hydroelectric generation dedicated to the customer's firm load responsibility, plus

(ii) Three and one half percent (3.5%) of non-hydroelectric generation dedicated to the customer's firm load responsibility.

b. The Billing Factor for energy delivered when Spinning Reserve Service is called upon is the energy delivered, in kilowatthours.

Section III. Control Area Service Rates

D. Operating Reserve—Supplemental Reserve Service

Operating Reserve—Supplemental Reserve Service must be purchased by a party with generation in the BPA Control Area that is receiving this service from BPA–TBL, and such Supplemental Reserve Service is not provided for under a BPA–TBL transmission agreement. Service is being received if there are no other qualifying resources providing this required reserve service in conformance with NERC, WECC and NWPP standards.

1. Rates

a. The rate shall not exceed 8.39 mills per kilowatthour of Supplemental Reserve Requirement.

b. For energy delivered, the customer shall, as directed by BPA–TBL either:

(i) Purchase the energy at the hourly market index price applicable at the time of occurrence, or

(ii) Return the energy at the times specified by BPA–TBL.

2. Billing Factors

a. The Billing Factor for Spinning Reserve Service is determined in accordance with applicable WECC and NWPP standards. Application of current standards establish a minimum Spinning Reserve Requirement equal to the sum of:

(i) Two and one half percent (2.5%) of the hydroelectric generation dedicated to the customer's firm load Responsibility, plus

(ii) Three and one half percent (3.5%) of non-hydroelectric generation dedicated to the customer's firm load responsibility, plus

(iii) Any power scheduled into the BPA Control Area that can be interrupted on ten (10) minutes' notice.

b. The Billing Factor for energy delivered when Supplemental Reserve Service is called upon is the energy delivered, in kilowatthours.

Section IV. Adjustments, Charges, and Other Rate Provisions A. Rate Adjustment Due to FERC Order Under FPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

General Rate Schedule Provisions for Transmission and Ancillary Service Rates

Section I. Generally Applicable Provisions

A. Approval of Rates

These 2004 rate schedules and General Rate Schedule Provisions (GRSPs) for Transmission and Ancillary Service Rates shall become effective upon interim approval or upon final confirmation and approval by the Federal Energy Regulatory Commission (FERC). Bonneville Power Administration (BPA) has requested that FERC make these rates and GRSPs effective on October 1, 2003. All rate schedules shall remain in effect until they are replaced or expire on their own terms.

B. General Provisions

These 2004 rate schedules and the GRSPs associated with these schedules supersede BPA's 2002 rate schedules (which became effective October 1, 2002) to the extent stated in the Availability section of each rate schedule. These schedules and GRSPs shall be applicable to all BPA–TBL contracts, including contracts executed both prior to, and subsequent to, enactment of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). All sales under these rate schedules are subject to the following acts as amended: the Bonneville Project Act (Pub. L. 75–329), 16 U.S.C. 832, the Pacific Northwest Consumer Power Preference Act (Pub. L. 88–552), 16 U.S.C. 837, the Federal Columbia River Transmission System Act (Pub. L. 93–454), 16 U.S.C. 838, the Northwest Power Act (Pub. L. 96–501), 16 U.S.C. 839, and the Energy Policy Act of 1992 (Pub. L. 102–486), 16 U.S.C. 824(i)—(l).

These 2004 rate schedules do not supersede any previously established rate schedule that is required, by agreement, to remain in effect.

If a provision in an executed agreement is in conflict with a provision contained herein, the former shall prevail.

C. Notices

For the purpose of determining elapsed time from receipt of a notice applicable to rate schedule and GRSP administration, a notice shall be deemed to have been received at 0000 hours on the first calendar day following actual receipt of the notice.

D. Billing and Payment

1. Billing Procedure

Within a reasonable time after the first day of each month, the BPA–TBL shall submit an invoice to the Transmission Customer for the charges for all services furnished under the Tariff and other agreements during the preceding month. The invoice shall be paid by the Transmission Customer within twenty (20) days of receipt. All payments shall be made in immediately available funds payable to the BPA–TBL, or by wire transfer to a bank named by the BPA–TBL.

2. Interest on Unpaid Balances

Interest on any unpaid amounts (including amounts placed in escrow) shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 CFR 35.19a(a)(2)(iii). Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by the BPA–TBL.

3. Customer Default

In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to make payment to the BPA–TBL on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the BPA–TBL notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Upon the occurrence of a default, the BPA–TBL may notify the Transmission Customer that it plans to terminate services in sixty (60) days. The Transmission Customer may use the dispute resolution procedures to contest such termination. In the event of a billing dispute between the BPA–TBL and the Transmission Customer, the BPA–TBL will continue to provide service under the Service Agreement as long as the Transmission Customer (I) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the BPA–TBL may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, in accordance with Commission policy.

Section II. Adjustments, Charges, and Special Rate Provisions

A. Delivery Charge

Transmission Customers shall pay a Delivery Charge for service over DSI Delivery facilities and Utility Delivery facilities.

1. Rates

a. DSI Delivery.—Use-of-Facilities (UFT–04) Rate, section III.B.1 or III.B.2

b. Utility Delivery.—$0.946 per kilowatt per month

2. Billing Factor

a. Utility Delivery.—The monthly Billing Factor for the Utility Delivery rate in section 1.b. shall be the total load on the hour of the Monthly Transmission Peak Load at the Points of Delivery specified as Utility Delivery facilities.

The monthly Utility Delivery Billing Factor shall be adjusted for customers who pay for Utility Delivery facilities under the Use-of-Facilities (UFT) rate schedule. The kilowatt credit shall equal the transmission service over the Delivery facilities used to calculate the UFT charge. This adjustment shall not reduce the Utility Delivery Charge billing factor below zero.

b. Metering Adjustment.—At those Points of Delivery that do not have meters capable of determining the demand on the hour of the Monthly Transmission Peak Load, the Billing Factor under section 2.a. shall equal the highest hourly demand that occurs during the billing month at the Point of Delivery multiplied by 0.79.

B. Failure To Comply Penalty Charge

If a party fails to comply with the BPA–TBL's curtailment, redispatch, or load shedding orders, the party will be assessed the Failure to Comply Penalty Charge.

Parties who are unable to comply with a curtailment, load shedding, or redispatch order due to a force majeure

on their system will not be subject to this penalty provided that they immediately notify the BPA–TBL of the situation upon occurrence of the force majeure.

1. Rate

The rate shall be the highest of:

a. 100 mills per kilowatthour;

b. any costs incurred by the BPA–TBL in order to manage the reliability of the FCRTS due to the failure to comply;

c. an hourly market price index plus 10%.

The hourly market price index will be the larger of the California ISO Ex-Post Supplemental Energy Price or the Dow Jones Mid-Columbia Firm Index Price for the hour(s) when the failure to comply occurred.

2. Billing Factors

The Billing Factor shall be the kilowatthours that were not curtailed or redispatched in any of the following situations:

a. Failure to shed load when required as specified by the Load Shedding provisions of the Open Access Transmission Tariff or any other applicable agreement between the parties. This includes failure to respond within the time period specified by the North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC), or Northwest Power Pool (NWPP) criteria.

b. Failure of a generator in the BPA Control Area or which directly interconnects to the FCRTS to change generation levels when directed to do so by the BPA–TBL. This includes failure to respond within the time period specified by NERC, WECC, or NWPP criteria.

c. Failure to curtail a schedule in the time period specified by NERC, WECC, or NWPP criteria when directed to do so by the BPA–TBL.

C. Power Factor Penalty Charge

1. Description of the Power Factor Penalty Charge

Any party that is interconnected with the Federal Columbia River Transmission System (FCRTS) shall be charged for its reactive power requirements as described in this section, unless otherwise specified in an agreement existing prior to October 1, 1995.

Each point of interconnection or point of delivery shall be monitored and billed independently for determining the party's total reactive power requirements and all associated billing factors, including the Reactive Deadband. If a party is taking transmission service under multiple rate schedules, the party will pay for its reactive power requirements as if it is taking delivery under only one rate schedule.

2. Conditions for Application of the Power Factor Penalty Charge

a. Measured Data.—The Power Factor Penalty Charge will apply to only the party's reactive power requirements for which measured data exist.

b. Party's Generating Resource Connected to the FCRTS.—Irrespective of the direction of real power flow, the Power Factor Penalty Charge shall apply to points of interconnection where a party's generating resource is directly connected to the FCRTS, unless the party's generating resource is either:

i. a synchronous generator equipped with a voltage regulator, or

ii. equipped with reactive power control devices that comply with BPA–TBL's applicable interconnection standards.

Such resource must actively support the voltage schedule at the point of integration at all times when the resource is in service, as determined by BPA Transmission Business Line, for this exemption to apply. Generating resources that do not satisfy the above criteria shall not be exempt from the Power Factor Penalty Charge.

c. Bi-directional Real Power Flow.—For points other than those specified in section 2(b), the Power Factor Penalty Charge will not be applied, and no new Ratchet Demand for reactive power will be established, at a specific point if the metered real power (on an hourly integrated basis) flows from the party's system to the FCRTS at that point for as little as one hour during the billing period. However, the party will still pay any previously incurred demand ratchet charges. The direction of the real power flow will be determined based on metered quantities, not on scheduled quantities.

d. Service by Transfer.—Points of delivery that are served by transfer over another utility's transmission system will not be subject to the Power Factor Penalty Charge unless there are significant BPA–TBL Network facilities between the party's points of delivery and the transferor's system.

e. Specific Points Exempt from the Power Factor Penalty Charge.—The Power Factor Penalty Charge will not apply to the following points:

Nevada-Oregon Border (NOB)
Big Eddy 500 kV
Big Eddy 230 kV
John Day 500 kV
Malin 500 kV
Captain Jack 500 kV
Garrison 500 kV
Townsend 500 kV

f. Special Circumstances.—The party may submit requests to BPA Transmission Business Line for consideration of unique circumstances. BPA Transmission Business Line will evaluate the request and may make arrangements with the party to address the special circumstances.

3. Rates

BPA–TBL will bill the party for reactive power at each point each month as follows:

Reactive Demand

$0.28 per kVAr of lagging reactive demand in excess of the Reactive Deadband during HLH in all months of the year.

$0.24 per kVAr of leading reactive demand in excess of the Reactive Deadband during LLH in all months of the year.

No charge for leading reactive demand during HLH.

No charge for lagging reactive demand during LLH.

4. Billing Factors

a. Reactive Deadband.—The Reactive Deadband (measured in kVAr) is used to determine the Reactive Billing Demand and Ratchet Demand for the Power Factor Penalty Charge.

The Reactive Deadband for each billing period is the maximum hourly integrated metered real power demand (measured in kW) at each point during the billing period multiplied by 25 percent.

The Reactive Deadband for either HLH or LLH:

(I) is computed once per billing period (the same quantity is used for both HLH and LLH),

(ii) does not vary during the billing period, and

(iii) is based on the maximum hourly integrated metered real power demand during that billing period.

b. Reactive Billing Demand.—The party's Reactive Billing Demand shall be calculated independently for lagging reactive power and leading reactive power at each point for which a Power Factor Penalty Charge is assessed.

All reactive demands shall be established in the particular HLH or LLH at each point during which the party's maximum applicable reactive demand is placed on BPA–TBL, regardless of the time of the real power peak at each point.

All reactive demand at each point shall be established on a non-coincidental basis, regardless of whether the party is billed for real power or

transmission at such point on a coincidental or non-coincidental basis, unless otherwise specified in the agreement between BPA–TBL and the party, or coincidental billing is, in BPA–TBL's sole determination, more practical for BPA–TBL.

There will be separate reactive demands for lagging (HLH) and leading (LLH) demands. The party's Reactive Billing Demand for each point for the billing month shall be the larger of:

(i) The largest measured reactive demand in excess of the Reactive Deadband during the billing period, or

(ii) The Ratchet Demand for reactive power.

The Ratchet Demand for reactive power is equal to 100 percent of the largest measured reactive demand in excess of the Reactive Deadband during the preceding 11-month period. Each point shall have a separate Ratchet Demand for lagging (HLH) and leading (LLH) reactive demand.

5. Adjustments for Reactive Losses

Measured data shall be adjusted for reactive losses, if applicable, before determination of the Reactive Billing Demand.

D. Rate Adjustment Due to FERC Order Under FPA § 212

If, after review by FERC, the NT, PTP, IS, or IM rate schedule, as initially submitted to FERC, is modified to satisfy the standards of section 212(i)(1)(B)(ii) of the Federal Power Act (16 U.S.C. 824k(i)(1)(B)(ii)) for FERC-ordered transmission service, then such modifications shall automatically apply to the rate schedule for non-section 212(i)(1)(B)(ii) transmission service. The modifications for non-section 212(i)(1)(B)(ii) transmission service, as described above, shall be effective, however, only prospectively from the date of the final FERC order granting final approval of the rate schedule for FERC-ordered transmission service pursuant to section 212(i)(1)(B)(ii). No refunds shall be made or additional costs charged as a consequence of this prospective modification for any non-section 212(i)(1)(B)(ii) transmission service that occurred under the rate schedule prior to the effective date of such prospective modification.

E. Reservation Fee

The Reservation Fee is a nonrefundable fee that shall be charged to any PTP Transmission Service customer who postpones the commencement of service by:

a. reserving ''deferred'' service for Long-Term Firm Point-to-Point Transmission Service through an advanced reservation; or

b. requesting an extension of the Service Commencement Date specified in the executed Service Agreement.

For requests beginning October 1, 2001, ''deferred'' service is any advance reservation of Long-Term Firm Point-to-Point Transmission Service with a Service Commencement Date greater than one (1) year from the request date.

The Reservation Fee shall be specified in the executed agreement for transmission service.

1. Fee

The Reservation Fee shall be a nonrefundable fee equal to one month's charge for the requested Long-Term Firm Point-to-Point Transmission Service for each year or fraction of a year for which the customer chooses to defer service or extend the Service Commencement Date. The Reservation Fee shall be paid annually until transmission service begins or the reservation period ends, whichever occurs first.

2. Payment

a. For deferred service, the Reservation Fee for the first year shall be paid in a lump sum within 30 days of the date the first year service deferral begins. For subsequent years, the Reservation Fee shall be paid in a lump sum within 30 days of the anniversary date of deferred service. The Reservation Fee shall be assessed annually until transmission service begins or the reservation period ends, whichever occurs first.

b. For extensions of the Service Commencement Date, the Reservation Fee for the first extension of the Service Commencement Date shall be paid in a lump sum within 30 days of the original Service Commencement Date. For subsequent extensions, the Reservation Fee shall be paid in a lump sum within 30 days of the anniversary date of the original Service Commencement Date.

F. Transmission and Ancillary Services Rate Discounts

BPA–TBL may offer discounted rates for transmission and ancillary services available under the Open Access Transmission Tariff and to the extent provided for in the PTP, IS, IM and ACS rate schedules.

Three principal requirements apply to discounts for transmission service, and for Ancillary Services provided by the Transmission Provider in conjunction with its provision of transmission service, as follows:

a. Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS;

b. Any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS; and

c. Once a discount is negotiated, details must be immediately posted on the OASIS.

For any discount agreed upon for transmission service on a path, from point(s) of receipt to point(s) of delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

A discount agreed upon for an Ancillary Service must be offered for the same period to all Eligible Customers on the Transmission Provider's System.

G. Unauthorized Increase Charge (UIC)

Transmission Customers taking Point-to-Point Transmission Service under the PTP, IS, and IM Rate Schedules shall be assessed the UIC when they exceed their capacity reservations at any Point of Receipt (POR) or Point of Delivery (POD). Transmission Customers taking Network Integration Transmission Service under the NT Rate Schedule shall be assessed the UIC if their Actual Customer-Served Load (CSL) is less than their Declared CSL.

1. Rate

a. Point-To-Point Transmission Service (PTP, IS, and IM Rate Schedules). (1) Long-Term Transmission Service.—The UIC rate shall be two (2) times the PTP, IS, or IM rate per kilowatt per month for Long-Term Firm PTP Transmission Service as specified in section II.A. of the applicable rate schedule.

(2) Monthly, Weekly, and Daily Transmission Service.—The UIC rate shall be two (2) times the rate per kilowatt for transmission service, calculated by applying the rates per kilowatt per day specified in section II.B.1 of the applicable rate schedule to the total number of days of the transmission reservation.

The UIC rate shall not exceed two (2) times the PTP, IS, or IM rate per kilowatt per month for Long-Term Firm Transmission Service.

(3) Hourly Transmission Service.—The UIC rate shall be two (2) times the rate per kilowatt for transmission service, calculated by applying the rate per kilowatthour specified in section II.B.2 of the applicable rate schedule to

the total number of hours of the transmission reservation.

b. Network Integration Transmission Service (NT Rate Schedule).—$2.056 per kilowatt per month

2. Billing Factors

a. Point-To-Point Transmission Service (PTP, IS, and IM Rate Schedules.—For each hour of the monthly billing period, BPA–TBL shall determine the amount by which the Transmission Customer exceeds its capacity reservation at each POD and POR, to the extent practicable. BPA–TBL shall use hourly measurements based on a 10-minute moving average to calculate actual demands at PODs associated with loads that are one-way dynamically scheduled and at PORs associated with resources that are one-way dynamically scheduled. To calculate actual demands at PODs and PORs that are associated with two-way dynamic schedules, BPA–TBL shall use instantaneous peak demands for each hour. Actual demands at all other PODs and PORs will be based on 60-minute integrated demands or transmission schedules.

For each hour, BPA–TBL will sum these amounts that exceed capacity reservations: (1) for all PODs, and (2) for all PORs. The Billing Factor for the monthly billing period shall be the greater of the highest one-hour POD sum or highest one-hour POR sum.

b. Network Integration Transmission Service (NT Rate Schedule).—In each billing month on the hour of the Monthly Transmission Peak Load, the Billing Factor shall equal the Declared CSL minus the Actual CSL.

3. UIC Relief

Under appropriate circumstances, BPA–TBL may waive or reduce the UIC to a Transmission Customer on a non-discriminatory basis. A Transmission Customer seeking a reduction or waiver must demonstrate good cause for relief, including a demonstration that:

1. The event which resulted in the UIC

(a) was the result of an equipment failure or outage that could not reasonably have been foreseen by the customer; and

(b) did not result in harm to BPA–TBL's transmission system or transmission services, or to any other Transmission Customer; or

2. The event which resulted in the UIC

(a) was inadvertent;

(b) could not have been avoided by the exercise of reasonable care;

(c) did not result in harm to BPA–TBL's transmission system or transmission services, or to any other Transmission Customer; and

(d) was not part of a recurring pattern of conduct by the Transmission Customer.

If a waiver or reduction is granted to a Transmission Customer, notice of such waiver or reduction will be posted on the BPA–TBL's OASIS.

If the Transmission Customer is subject to a UIC in a month, but has not received notice from the BPA–TBL of such UIC by billing or otherwise, and the Transmission Customer is also subject to UIC(s) in following month(s) due to the lack of notice, then BPA–TBL may bill the Transmission Customer for the highest UIC in the series. The UIC for all other months (including the first month(s) if it does not have the highest UIC) in such a series will be waived.

H. GTA Delivery Charge

Customers who purchase Federal power that is delivered over non-Federal low voltage transmission facilities shall pay a GTA Delivery Charge. The GTA Delivery Charge is a BPA Power Business Line charge for low voltage delivery service of Federal power provided under General Transfer Agreements (GTAs) and other non-Federal transmission service agreements.

1. Rate

$0.946 per kilowatt per month

2. Billing Factor

The monthly Billing Factor for the GTA Delivery rate shall be the total amount of Federal power delivered on the hour of the Monthly Transmission Peak Load at the low voltage Points of Delivery provided for in GTA and other non-Federal transmission service agreements.

At those Points of Delivery that do not have meters capable of determining the demand on the hour of the Monthly Transmission Peak Load, the Billing Factor shall equal the highest hourly demand that occurs during the billing month at the Point of Delivery multiplied by 0.79.

Section III. Definitions

1. Ancillary Services

Ancillary Services are those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of BPA–TBL's Transmission System in accordance with Good Utility Practice. Ancillary Services include: Scheduling, System Control and Dispatch; Reactive Supply and Voltage Control from Generation Sources; Regulation and Frequency Response; Energy Imbalance; Operating Reserve—Spinning; and Operating Reserve—Supplemental. Ancillary Services are available under the ACS rate schedule.

2. Billing Factor

The *Billing Factor* is the quantity to which the charge specified in the rate schedule is applied. When the rate schedule includes charges for several products, there may be a Billing Factor for each product.

3. Control Area

A *Control Area* is an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

1. Match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

2. Maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;

3. Maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and

4. Provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

4. Control Area Services

Control Area Services are available to meet the Reliability Obligations of a party with resources or loads in the BPA Control Area. A party that is not satisfying all of its Reliability Obligations through the purchase or self-provision of Ancillary Services may purchase Control Area Services to meet its Reliability Obligations. Control Area Services are also available to parties with resources or loads in the BPA Control Area that have Reliability Obligations, but do not have a transmission agreement with BPA–TBL. Reliability Obligations for resources or loads in the BPA Control Area are determined by applying the North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC), and the Northwest Power Pool (NWPP) reliability criteria. Control Area Services, include, without limitation:

a. Regulation and Frequency Response Service

b. Generation Imbalance Service

c. Operating Reserve—Spinning Reserve Service

d. Operating Reserve—Supplemental Reserve Service
e. Other Control Area services.

5. Daily Service

Daily Service is Short-Term Firm and Non-Firm PTP Transmission Service that starts at 00:00 of any date and stops at 00:00 at least one (1) day later, but less than or equal to six (6) days later.

6. Direct Assignment Facilities

Facilities or portions of facilities that are constructed by the BPA–TBL for the sole use/benefit of a particular Transmission Customer requesting service under the Open Access Transmission Tariff, the costs of which may be directly assigned to the Transmission Customer in accordance with applicable Federal Energy Regulatory Commission policy. Direct Assignment Facilities shall be specified in the service agreement that governs service to the Transmission Customer.

7. Direct Service Industry (DSI) Delivery

The DSI Delivery segment is the segment of the FCRTS that provides service to DSI customers at voltages of 34.5 kV and below.

8. Dynamic Schedule

A *Dynamic Schedule* is a telemeter reading or value which is updated in real time and which is used as a schedule in the Automatic Generation Control (AGC) and Area Control Error (ACE) equation of the BPA–TBL and the integrated value of which is treated as a schedule for interchange accounting purposes. One-way Dynamic Schedules are commonly used for scheduling remote generation or remote load to or from another Control Area. Two-way Dynamic Schedules are commonly used to provide supplemental regulation or operating reserve support from one entity to another, usually between Control Areas. The Receiving Party sends the Delivering Party a requested Dynamic Schedule (the first part of the two-way schedule). The Delivering Party then responds with the official Dynamic Schedule of what actually is delivered to the Receiving Party (the second part of the two-way schedule).

9. Dynamic Transfer

Dynamic Transfer is the provision of real-time monitoring, telemetering, computer software, hardware, communications, engineering, transmission capacity and energy accounting (including inadvertent interchange), and administration, including transmission scheduling, required to electronically move all or a portion of the real energy services associated with a generator or load out of one Control Area into another Control Area.

10. Eastern Intertie

The *Eastern Intertie* is the segment of the Federal Columbia River Transmission System (FCRTS) for which the transmission facilities consist of the Townsend-Garrison double-circuit 500 kV transmission line segment, including related terminals at Garrison.

11. Energy Imbalance Service

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a Control Area over a single hour. The BPA–TBL must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the BPA–TBL or make alternative comparable arrangements specified in the Transmission Customer's Service Agreement to satisfy its Energy Imbalance Service obligation.

12. Federal Columbia River Transmission System

The *Federal Columbia River* Transmission System (FCRTS) is the transmission facilities of the Federal Columbia River Power System, which include all transmission facilities owned by the government and operated by BPA, and other facilities over which BPA has obtained transmission rights.

13. Federal System

The *Federal System* is the generating facilities of the Federal Columbia River Power System, including the Federal generating facilities for which BPA is designated as marketing agent; the Federal facilities under the jurisdiction of BPA; and any other facilities:

a. from which BPA receives all or a portion of the generating capability (other than station service) for use in meeting BPA's loads to the extent BPA has the right to receive such capability. ''BPA's loads'' do not include any of the loads of any BPA customer that are served by a non-Federal generating resource purchased or owned directly by such customer which may be scheduled by BPA;

b. which BPA may use under contract or license; or

c. to the extent of the rights acquired by BPA pursuant to the 1961 U.S.-Canada Treaty relating to the cooperative development of water resources of the Columbia River Basin.

14. Generation Imbalance

Generation Imbalance is the difference between the hourly scheduled amount and actual delivered amount of energy from a generation resource in the BPA Control Area.

15. Generation Imbalance Service

Generation Imbalance Service is taken when there is a difference between scheduled and actual energy delivered from generation resources in the BPA Control Area during a schedule hour.

16. Heavy Load Hours (HLH)

Heavy Load Hours (HLH) are all those hours in the peak period hour ending 7 a.m. to the hour ending 10 p.m., Monday through Saturday, Pacific Prevailing Time (Pacific Standard Time or Pacific Daylight Time, as applicable). There are no exceptions to this definition; that is, it does not matter whether the day is a normal working day or a holiday.

17. Hourly Firm Point-To-Point (PTP) Transmission Service

Hourly Firm Point-To-Point (PTP) Service, or Hourly Firm Service, is firm transmission service under Part II of the Open Access Transmission Tariff in hourly increments.

18. Hourly Nonfirm Service

Hourly Nonfirm Service is nonfirm transmission service under Part II of the Open Access Transmission Tariff in hourly increments.

19. Integrated Demand

Integrated Demand is the quantity derived by mathematically ''integrating'' kilowatthour deliveries over a 60-minute period. For one-way dynamic schedules, demand is integrated on a rolling ten-minute basis.

20. Intentional Deviation

BPA, in its sole determination, may find that an Intentional Deviation exists if:

(a) A deviation is persistent during multiple consecutive hours or at specific times of the day;

(b) A pattern of under-delivery or over-use of energy occurs; or

(c) Persistent over-generation or under-use during Light Load Hours, particularly when the customer does not respond by adjusting schedules for future days to correct these patterns.

21. Light Load Hours (LLH)

Light Load Hours (LLH) are all those hours in the offpeak period hour ending 11 p.m. to hour ending 6 a.m., Monday through Saturday and all hours Sunday, Pacific Prevailing Time (Pacific

Standard Time or Pacific Daylight Time, as applicable).

22. Long-Term Firm Point-To-Point (PTP) Transmission Service

Long-Term Firm Point-to-Point Transmission Service is Firm Point-To-Point Transmission Service under Part II of the Open Access Transmission Tariff with a term of one year or more.

23. Main Grid

As used in the FPT rate schedule, the *Main Grid* is that portion of the Network facilities with an operating voltage of 230 kV or more.

24. Main Grid Distance

As used in the FPT rate schedules, *Main Grid Distance* is the distance in airline miles on the Main Grid between the Point of Integration (POI) and the Point of Delivery (POD), multiplied by 1.15.

25. Main Grid Interconnection Terminal

As used in the FPT rate schedules, *Main Grid Interconnection Terminal* refers to Main Grid terminal facilities that interconnect the FCRTS with non-BPA facilities.

26. Main Grid Miscellaneous Facilities

As used in the FPT rate schedules, *Main Grid Miscellaneous Facilities* refers to switching, transformation, and other facilities of the Main Grid not included in other components.

27. Main Grid Terminal

As used in the FPT rate schedules, *Main Grid Terminal* refers to the Main Grid terminal facilities located at the sending and/or receiving end of a line, exclusive of the Interconnection terminals.

28. Measured Demand

The *Measured Demand* is that portion of the customer's Metered or Scheduled Demand for transmission service from BPA–TBL under the applicable transmission rate schedule. If transmission service to a point of delivery, or from a point of receipt, is provided under more than one rate schedule, the portion of the measured quantities assigned to any rate schedule shall be as specified by contract. The portion of the total Measured Demand so assigned shall be the Measured Demand for transmission service for each transmission rate schedule.

29. Metered Demand

Except for dynamic schedules, the *Metered Demand* in kilowatts shall be the largest of the 60-minute clock-hour Integrated Demands at which electric energy is delivered (received) for a transmission customer:

a. At each point of delivery (receipt) for which the Metered Demand is the basis for the determination of the Measured Demand;

b. During each time period specified in the applicable rate schedule; and

c. During any billing period.

Such largest Integrated Demand shall be determined from measurements made in accord with the provisions of the applicable contract and these GRSPs. This amount shall be adjusted as provided herein and in the applicable agreement between BPA–TBL and the customer.

For one-way Dynamic Schedules, the Metered Demand in kilowatts shall be the largest 10 minute moving average of the load (generation) at the point of delivery (receipt). The 10-minute moving average shall be assigned to the hour in which the 10 minute period ends. For two-way Dynamic Schedules, the Metered Demand in kilowatts shall be the largest instantaneous value of the Dynamic Schedule during the hour.

30. Montana Intertie

The *Montana Intertie* is the double-circuit 500 kV transmission line and associated substation facilities from Broadview Substation to Garrison Substation.

31. Monthly Firm Service

Monthly Firm Service is Short-Term Firm PTP Transmission Service that starts at 00:00 of any date and stops at 00:00 at least 28 days later, but less than or equal to 364 days later.

32. Monthly Non-Firm Service

Monthly Non-Firm Service is Non-Firm PTP Transmission Service that starts at 00:00 of any date and stops at 00:00 at least 28 days later, but less than or equal to 31 days later.

33. Monthly Transmission Peak Load

Monthly Transmission Peak Load is the peak loading on the Federal transmission system during any hour of the designated billing month, determined by the largest hourly integrated demand produced from the sum of Federal and non-Federal generating plants in BPA's Control Area and metered flow into BPA's Control Area.

34. Network (or Integrated Network)

The *Network* is the segment of the Federal Columbia River Transmission System (FCRTS) for which the transmission facilities provide the bulk of transmission of electric power within the Pacific Northwest.

35. Network Integration Transmission (NT) Service

Network Integration Transmission (NT) Service is the transmission service provided under Part III of the Open Access Transmission Tariff.

36. Network Load

Network Load is the load that a Network Customer designates for Network Integration Transmission Service under Part III of the Open Access Transmission Tariff. The Network Customer's Network Load shall include all load served by the output of any Network Resources designated by the Network Customer. A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Where an Eligible Customer has elected not to designate a particular load at discrete Points of Delivery as Network Load, the Eligible Customer is responsible for making separate arrangements under Part II of the Tariff for any Point-to-Point Transmission Service that may be necessary for such non-designated load.

37. Network Upgrades

Network Upgrades are modifications or additions to transmission-related facilities that are integrated with and support the BPA-TBL's overall Transmission System for the general benefit of all users of such Transmission System.

38. Non-Firm Point-To-Point (PTP) Transmission Service

Non-Firm Point-To-Point Transmission Service is Point-To-Point Transmission Service under the Open Access Transmission Tariff that is reserved and scheduled on an as-available basis and is subject to Curtailment or Interruption as set forth in Section 14.7 under Part II of the Tariff. Non-Firm PTP Transmission Service is available on a stand-alone basis for periods ranging from one hour to one month.

39. Operating Reserve—Spinning Reserve Service

Operating Reserve—Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output. The BPA–TBL must offer this service when the transmission service is provided to load served by generation located in the BPA Control Area. The Transmission or Control Area Service Customer must either purchase this service from the BPA–TBL or make

alternative comparable arrangements to satisfy its Spinning Reserve Service obligation. The Transmission or Control Area Service Customer's obligation is determined consistent with North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WECC) and Northwest Power Pool (NWPP) criteria.

40. Operating Reserve—Supplemental Reserve Service

Operating Reserve—Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The BPA–TBL must offer this service when the transmission service is provided to load served by generation located in the BPA Control Area. The Transmission or Control Area Service Customer must either purchase this service from the BPA–TBL or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation. The Transmission Customer's obligation is determined consistent with North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC) and Northwest Power Pool criteria.

41. Operating Reserve Requirement

Operating Reserve Requirement is a party's total reserve obligation to the BPA Control Area. A party is responsible for purchasing or otherwise providing Operating Reserves associated with its transactions which impose a reserve obligation on the BPA Control Area. Operating Reserve Requirement is composed of two parts: regulating reserve obligation and contingency reserve obligation.

A party's regulating reserve obligation is met by purchasing Regulation and Frequency Response Service. The contingency reserve obligation is satisfied by purchasing or otherwise providing Operating Reserve—Spinning Reserve Service and Operating Reserve—Supplemental Reserve Service.

The specific amounts required are determined consistent with North American Electric Reliability Council (NERC) Policies, the Northwest Power Pool (NWPP) Operating Manual, ''Contingency Reserve Sharing Procedure,'' and the Western Electricity Coordinating Council (WECC) ''Minimum Operating Reliability Criteria'' (MORC).

42. Point(s) of Delivery (POD)

Point(s) on the BPA–TBL's Transmission System, or transfer points on other utility systems pursuant to section 36 of the Open Access Transmission Tariff (Tariff), where capacity and energy transmitted by the BPA–TBL will be made available to the Receiving Party under Parts II and III of the Tariff or to the Transmission Customer under other BPA transmission service agreements. The Point(s) of Delivery shall be specified in the Service Agreement for Long-Term Firm Point-to-Point Service, Network Integration Transmission Service, and other BPA–TBL transmission services.

43. Point of Integration (POI)

A *Point of Integration* is the contractual interconnection point where power is received from the customer. Typically, a point of integration is located at a resource site, but it could be located at some other interconnection point.

44. Point of Interconnection (POI)

A *Point of Interconnection* is a point where the facilities of two entities are interconnected. This term has the same meaning as ''Point of Integration'' and ''Point of Receipt'' in certain pre-Open Access Transmission Tariff service agreements.

45. Point(s) of Receipt (POR)

Point(s) of Receipt are the point(s) of interconnection on the BPA–TBL's Transmission System where capacity and energy will be made available to the BPA–TBL by the Delivering Party under Parts II and III of the Open Access Transmission Tariff. The Point(s) of Receipt shall be specified in the Service Agreement for Long-Term Firm Point-to-Point Service, Network Integration Transmission Service, and other BPA–TBL transmission services.

46. Ratchet Demand

The *Ratchet Demand* in kilowatts or kilovars is the maximum demand established during a specified period of time either during, or prior to, the current billing period. The Ratchet Demand shall be the maximum demand established during the previous 11 billing months. If a Transmission Demand has been decreased pursuant to the terms of the transmission agreement during the previous 11 billing months, such decrease will be reflected in determining the Ratchet Demand. The Ratchet Demand for reactive power is defined in the Power Factor Penalty Charge at section II.D of these GRSPs.

47. Reactive Power

Reactive Power is the out-of-phase component of the total volt-amperes in an electric circuit. Reactive Power has two components: reactive demand (expressed in kilovars or kVAr) and reactive energy (expressed in kilovarhours or kVArh).

48. Reactive Supply and Voltage Control from Generation Sources Service

Reactive Supply and Voltage Control from Generation Sources Service is required to maintain voltage levels on the BPA–TBL's transmission facilities within acceptable limits. In order to maintain transmission voltages on the BPA–TBL's transmission facilities within acceptable limits, generation facilities (in the Control Area where the BPA–TBL's transmission facilities are located) are operated to produce (or absorb) reactive power. Thus, Reactive Supply and Voltage Control from Generation Sources Service must be provided for each transaction on the BPA–TBL's transmission facilities. The amount of Reactive Supply and Voltage Control from Generation Sources Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the BPA–TBL. The Transmission Customer must purchase this service from the BPA–TBL.

49. Regulation and Frequency Response Service

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources (generation and interchange) with load and for maintaining scheduled Interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use of automatic generating control equipment) as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the BPA–TBL. The BPA–TBL must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the BPA–TBL or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation.

50. Reliability Obligations

Reliability Obligations are the obligations that a party with resources or loads in the BPA Control Area must provide in order to meet minimum reliability standards. Reliability Obligations shall be determined consistent with applicable North American Electric Reliability Council (NERC), Western Electricity Coordinating Council (WECC), and Northwest Power Pool (NWPP) standards. BPA–TBL offers Ancillary Services and Control Area Services to allow resources or loads to meet their Reliability Obligations.

51. Capacity Reserved

The maximum amount of capacity and energy that BPA–TBL agrees to transmit for the Transmission Customer over the BPA–TBL's Transmission System between the Point(s) of Receipt and the Point(s) of Delivery under Part II of the Open Access Transmission Tariff. Reserved Capacity shall be expressed in terms of whole megawatts on a sixty (60) minute interval (commencing on the clock hour) basis. In cases where Dynamic Schedules are involved, the Reserved Capacity must be set at a level to accommodate (a) a demand equal to the largest ten-minute (10) moving average of the load or generation expected to occur during the contract period for one-way Dynamic Schedules used to transfer generation or load from one Control Area to another Control Area; or (b) a demand equal to the instantaneous peak demand, for each direction, of the supplemental Control Area service request expected to occur during the contract period for two-way Dynamic Transfers, used to provide supplemental Control Area services. The supplemental Control Area service response shall always be the lesser of the Control Area service request or the Reserved Capacity associated with the supplemental Control Area service.

52. Scheduled Demand

Scheduled Demand is the hourly demand at which electric energy is scheduled for transmission on the FCRTS.

53. Scheduling, System Control and Dispatch Service

Scheduling, System Control and Dispatch Service is required to schedule the movement of power through, out of, within, or into a Control Area. This service can be provided only by the operator of the Control Area in which the transmission facilities used for transmission service are located. The Transmission Customer must purchase this service from the BPA–TBL.

54. Secondary System

As used in the FPT rate schedules, *Secondary System* is that portion of the Network facilities with an operating voltage between 69 kV to less than 230 kV.

55. Secondary System Distance

As used in the FPT rate schedules, *Secondary System Distance* is the number of circuit miles of Secondary System transmission lines between the secondary Point of Integration and either the Main Grid or the secondary Point of Delivery (POD), or between the Main Grid and the secondary POD.

56. Secondary System Interconnection Terminal

As used in the FPT rate schedules, *Secondary System Interconnection Terminal* refers to the terminal facilities on the Secondary System that interconnect the FCRTS with non-BPA–TBL facilities.

57. Secondary System Intermediate Terminal

As used in the FPT rate schedules, *Secondary System Intermediate Terminal* refers to the first and final terminal facilities in the Secondary System transmission path, exclusive of the Secondary System Interconnection terminals.

58. Secondary Transformation

As used in the FPT rate schedules, *Secondary Transformation* refers to transformation from Main Grid to Secondary System facilities.

59. Short-Term Firm Point-To-Point (PTP) Transmission Service

Short-Term Firm Point-To-Point Transmission Service is Firm Point-To-Point Transmission Service under Part II of the Open Access Transmission Tariff with a term of less than one year. Short-Term Firm Point-To-Point Transmission Service of duration of less than one calendar day is sometimes referred to as Hourly Firm Point-To-Point Transmission Service.

60. Southern Intertie

The *Southern Intertie* is the segment of the FCRTS that includes, but is not limited to, the major transmission facilities consisting of two 500 kV AC lines from John Day Substation to the Oregon-California border; a portion of the 500 kV AC line from Buckley Substation to Summer Lake Substation; and the 500 kV AC Intertie facilities, which include Captain Jack Substation, the Alvey-Meridian AC line, one 1,000 kV DC line between the Celilo Substation and the Oregon-Nevada border, and associated substation facilities.

61. Spill Condition

Spill Condition, for the purpose of determining credit or payment for Deviations under the Energy Imbalance and Generation Imbalance rates, exists when spill physically occurs on the BPA system due to lack of load or market. Spill due to lack of load or market typically occurs during periods of high flows or flood control implementation, but can also occur at other times. Discretionary spill, where BPA may choose whether to spill, does not constitute a Spill Condition. Spill for fish is included in discretionary spill and is not a Spill Condition.

62. Spinning Reserve Requirement

Spinning Reserve Requirement is a portion of a party's Operating Reserve Requirement to the BPA Control Area. A party is responsible for purchasing or otherwise providing Operating Reserve—Spinning Reserve Service associated with its transactions which impose a reserve obligation on the BPA Control Area.

The specific amounts required are determined consistent with North American Electric Reliability Council (NERC) Policies, the Northwest Power Pool (NWPP) Operating Manual, ''Contingency Reserve Sharing Procedure,'' and the Western Electricity Coordinating Council (WECC) ''Minimum Operating Reliability Criteria'' (MORC).

63. Supplemental Reserve Requirement

Supplemental Reserve Requirement is a portion of a party's Operating Reserve Requirement to the BPA Control Area. A party is responsible for purchasing or otherwise providing Operating Reserve—Supplemental Reserve Service associated with its transactions which impose a reserve obligation on the BPA Control Area.

The specific amounts required are determined consistent with North American Electric Reliability Council (NERC) Policies, the Northwest Power Pool (NWPP) Operating Manual, ''Contingency Reserve Sharing Procedure,'' and the Western Electricity Coordinating Council (WECC) ''Minimum Operating Reliability Criteria'' (MORC).

64. Total Transmission Demand

Total Transmission Demand is the sum of all the transmission demands as defined in the applicable agreement.

65. Transmission Customer

A *Transmission Customer* is any Eligible Customer (or its Designated Agent) under the Open Access Transmission Tariff that (a) executes a Service Agreement, or (b) requests in writing that the BPA–TBL file with the Commission, a proposed unexecuted Service Agreement to receive transmission service under Part II of the Tariff. In addition, a Transmission Customer is an entity that has executed any other transmission service agreement with the BPA–TBL.

66. Transmission Demand

Transmission Demand is the maximum amount of capacity and energy that the BPA–TBL agrees to transmit for the Transmission Customer over the BPA–TBL's Transmission System between the Point(s) of Integration/Interconnection/Receipt and the Point(s) of Delivery.

67. Transmission Provider

The Bonneville Power Administration's Transmission Business Line (BPA–TBL) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Open Access Transmission Tariff and other agreements.

68. Utility Delivery

The *Utility Delivery* segment is that segment of the FCRTS that provides service to utility customers at voltages below 34.5 kV.

69. Weekly Service

Weekly Service is Short-Term Firm and Non-Firm PTP Transmission Service that starts at 00:00 of any date and stops at 00:00 at least seven (7) days later, but less than or equal to 27 days later.

Issued in Portland, Oregon, on December 12, 2002.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 02–32070 Filed 12–19–02; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Friday,

December 20, 2002

Part IV

Environmental Protection Agency

Proposed National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7424–9]

Proposed National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for comment.

SUMMARY: EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 today are proposing EPA's NPDES general permits for discharges from large and small construction activity. Hereinafter, the terms ''permit'' or ''construction general permit'' or ''CGP'' will replace ''permits.'' Today's proposed permit will replace the existing permit covering large construction sites in EPA Regions 1, 2, 3, 7, 8, 9 and 10 that expires on February 17, 2003 and the permit covering large construction sites in EPA Region 6 that expires July 6, 2003. Today's proposed permit would also cover large construction sites in EPA Region 5. In addition, today's proposed permit incorporates coverage of small construction activity in EPA Regions 1, 2, 3, 5, 6, 7, 8, 9 and 10. Today's proposed permit is similar to the 1998 permits and will authorize the discharge of pollutants in storm water runoff associated with construction activities in accordance with the terms and conditions described therein.

Note: EPA is also announcing its intention to propose, in a subsequent rulemaking, to delay the permit authorization deadline set forth in the NPDES regulations as it may relate to oil and gas construction activity that disturbs between one and five acres of land. The Agency intends to propose to delay this deadline in order to better evaluate the impact of the permit requirements on the oil and gas industry and the best management practices to prevent contamination of storm water runoff, while analyzing the scope and effect of 33 U.S.C. 1342 (l)(2) and other provisions of the Clean Water Act.

DATES: Comments on the proposed general permit must be postmarked by February 3, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send written comments to: Follow the detailed instructions as provided in Section I.B.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed NPDES general permit, contact the appropriate EPA Regional Office listed in Section I.F, or contact Jack Faulk, Office of Wastewater Management, Office of Water, EPA Headquarters at tel.: 202–564–0768 or e-mail: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0055. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA seeks comment on the proposed permit and on the accompanying fact sheet. EPA is not, at this time, seeking comment on a possible proposed revision of the permit application deadline for storm water discharges associated with small construction activity in 40 CFR 122.26(e)(8) as it may relate to oil and gas construction activity that disturbs between one and five acres of land. When EPA proposes to make such a revision, the Agency will seek comment on such proposal at that time.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or

CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. OW–2002–0055. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *ow-docket@epa.gov,* Attention Docket ID No. OW–2002–0055. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in Section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2002–0055.

3. *By Hand Delivery or Courier.* Deliver your comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OW–2002–0055. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

C. Public Hearings

EPA has not scheduled any public hearings to receive public comment concerning the proposed permits in view of the more informal public meetings that will be held and limited attendance at previous hearings which have been held related to the construction general permit. All persons will continue to have the right to provide written comments at any time during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

D. Public Meetings

EPA will be holding a series of more informal public meetings which will include a presentation on the draft permits and a question and answer session. Due to an informal public meeting's ability to accommodate group discussion and question and answer sessions, public meetings have been used for many storm water general permits and appear to be more valuable than formalized public hearings in helping the public understand a draft storm water permit and identify the issues of concern. Written, but not oral, comments for the official permit record will be accepted at the public meetings. Comments generated from what was learned at a public meeting (or discussion with someone who did attend) can be submitted any time up to the end of the comment period. More information on these meetings will be available on the Internet at *http://www.epa.gov/npdes/stormwater* and on the various EPA Regional Web sites (*e.g. http://www.epa.gov/region6/sws* for EPA Region 6, *http://www.epa.gov/r10earth/stormwater.htm* for EPA Region 10) as soon as dates and locations have been finalized.

E. Finalizing the Permit

After the close of the public comment period, EPA will issue a final permit decision. This decision will not be made until after all public comments have been considered and appropriate changes made to the permit. A Responses to Comments will be included as part of the final permit decision.

F. Who Are the EPA Regional Contacts for This Proposed Permit?

For EPA Region 1, contact Thelma Murphy at tel.: (617) 918–1615 or e-mail at *murphy.thelma@epa.gov.*

For EPA Region 2, contact Karen O'Brien at tel.: (212) 637–3717 or e-mail at *obrien.karen@epa.gov* or for Puerto Rico, Sergio Bosques at tel.: (787) 977–5838 or e-mail at *bosques.sergio@epa.gov.*

For EPA Region 3, contact William Toffel at tel.: (215) 814–5706 or *toffel.william@epa.gov.*

For EPA Region 5, contact Brian Bell at tel.: (312) 886–0981 or e-mail at *bell.brianc@epa.gov.*

For EPA Region 6, contact Brent Larsen at tel.: (214) 665–7523 or e-mail at: *larsen.brent@epa.gov.*

For EPA Region 7, contact Mark Matthews at tel.: (913) 551–7635 or e-mail at: *matthews.mark@epa.gov.*

For EPA Region 8, contact Vern Berry at tel.: (303) 312–6234 or e-mail at: *berry.vern@epa.gov.*

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972–3510 or e-mail at *bromley.eugene@epa.gov.*

For EPA Region 10, contact Misha Vakoc at tel.: (206) 553–6650 or e-mail at *vakoc.misha@epa.gov.*

II. Background

A. Statutory and Regulatory History

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directed the Environmental Protection Agency (EPA) to develop a phased approach to regulate storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on the first phase on this program on November 16, 1990, establishing permit application requirements for ''storm water discharges associated with industrial activity.'' EPA defined the term ''storm water discharge associated with industrial activity'' in a comprehensive manner to cover a wide variety of

facilities. Construction activities that disturb at least five acres of land and have point source discharges to waters of the U.S. are defined as an ''industrial activity'' per 40 CFR 122.26(b)(14)(x).

Phase II of the storm water program was published in the **Federal Register** on December 8, 1999. Phase II includes sites disturbing greater that one acre and less than five acres as well as sites less than one acre of total land area that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity is defined per 40 CFR 122.26(b)(15)(i).

In developing the Phase II storm water regulations, EPA conducted analysis of the potential impacts of the regulation on the National economy and also analyzed impacts on small businesses. These impacts focused on implementation of sediment and erosion control practices or best management practices to reduce pollutants commonly associated with construction storm water discharges. In performing these analyses, EPA considered affected industrial sectors, including the oil and gas industry. EPA determined that few, if any, oil and gas exploration sites would be affected by Phase II and impacts on the accuracy of Phase II rule cost estimates were unlikely to be significant. Therefore, EPA did not include oil and gas exploration sites in the Final Draft of the Economic Analysis of the Phase II Final Rule. Since January 2002, information has become available indicating that close to 30,000 oil and gas sites may be affected by the Phase II storm water regulations. In the spirit of Executive Order 13211, which directs EPA to consider the impact of its actions on energy-related production activities, the Agency believes it is important to review the economic analysis of the Phase II rule to determine the impact on the oil and gas industry. In evaluating the impact, the Agency will work with states, industry, and other entities to gather and evaluate data on the development and use of appropriate best management practices for the oil and gas industry. EPA will also continue to review the scope and effect of 33 U.S.C. 1342(l)(2), relating to oil and gas exploration activities, and other provisions of the Clean Water Act. EPA intends in the very near future to propose to extend the March 10, 2003, permit authorization deadline for Phase II oil and gas facilities to be covered by a storm water permit.

B. Summary of Significant Changes From 1998 Construction General Permit

This permit replaces the previous Construction General Permits which were issued for a five-year term by various EPA Regions in February 1998 (63 FR 7858) and July 1998 (63 FR 36490). The organization and numbering of today's draft CGP has been revised slightly from the 1998 CGP to more clearly present permittee responsibilities. In addition, following is a list of significant changes included in the draft CGP as compared to the February 1998 CGP. These changes are discussed in more detail in the CGP fact sheet.

1. Change in Permit Areas Covered

i. Additions

a. Indian Country within the States of Michigan, Wisconsin, Minnesota, Louisiana, Oklahoma, New Mexico, and Texas,

b. State of New Mexico,

c. Discharges in the State of Oklahoma that are not under the authority of the Oklahoma Department of Environmental Quality, including activities associated with oil and gas exploration, drilling, operations, and pipelines (includes SIC codes 1311, 1381, 1382, 1389, and 5171), and point source discharges associated with agricultural production, services, and silviculture, and

d. Discharges in the State of Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly TNRCC), including activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline.

ii. Deletions

a. State of Maine,

b. Indian Country within the State of Maine.

c. State of Arizona.

2. *Small construction activities (those disturbing one to five acres)* added to eligibility provisions.

3. *Uncontaminated excavation dewatering* added as an allowable non-storm water discharge.

4. *Eligibility provisions for discharges threatening water quality* clarified.

5. *Restrictions on and documentation of discharges to waters with Total Maximum Daily Loads (TMDLs)* added.

6. *Eligibility requirements specific to the National Historic Preservation Act* added.

7. *Small construction waiver availability* added.

8. *Discharge authorization timeframe* changed from 48 hours after NOI submission to immediately upon submission of a complete and accurate NOI.

9. *NOI content requirements (and draft revised NOI Form)* modified to include:

i. Nature of construction project,

ii. Name of Indian reservation or affiliated Tribe,

iii. Address of SWPPP location changed from optional to required,

iv. Receiving water name clarified to indicate MS4 name may be appropriate response,

v. Identification of whether site is part of larger common plan and if site is large or small, and

vi. National Historic Preservation Act eligibility certification.

10. *Notification of potential waiting periods for permit authorization* in certain areas as necessitated for the protection of endangered or threatened species added.

11. *Clarification that partial final stabilization is acceptable* in certain instances.

12. *Elimination of the need to estimate runoff coefficient* of the site for pre- and post-construction.

13. *Option for weekly site inspections* rather than biweekly inspections with followup inspections after each rain event added.

14. *Inspection requirements for linear construction projects* clarified.

15. *Procedures for addressing non-attainment of water quality standards* added.

16. *Standard conditions revised* consistent with 40 CFR 122.41.

17. *Delegation of signatory authorities* for all reports other than NOIs, can be retained on-site in the SWPPP rather than submitted to EPA.

C. Summary of Terms and Conditions of Proposed General Permit

1. Discharges Covered

Operators of large and small construction activities within the areas listed below may be eligible to obtain coverage under this permit for allowable storm water and non-storm water discharges:

Region 1: The Commonwealth of Massachusetts and the State of New Hampshire; Indian Country in the Commonwealth of Massachusetts and the States of Rhode Island and Connecticut; and Federal facilities in Vermont.

Region 2: The Commonwealth of Puerto Rico and Indian Country in the State of New York.

Region 3: District of Columbia; and Federal facilities in the State of Delaware.

Region 5: Indian Country in the States of Michigan, Minnesota, and Wisconsin.

Region 6: The State of New Mexico; Indian Country in the States of Louisiana, Oklahoma, Texas, and New Mexico (except Navajo Reservation Lands [see Region 9] and Ute Mountain Reservation Lands (see Region 8)); discharges in the State of Oklahoma that are not under the authority of the Oklahoma Department of Environmental Quality, including activities associated with oil and gas exploration, drilling, operations, and pipelines (includes SIC codes 1311, 1381, 1382, 1389, and 5171), and point source discharges associated with agricultural production, services, and silviculture; and discharges in the State of Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly the Texas Natural Resource Conservation Commission), including activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline.

Region 7: Indian Country in the States of Iowa, Kansas, and Nebraska (except Pine Ridge Reservation Lands (see Region 8)).

Region 8: Federal facilities in Colorado; Indian Country in Colorado (as well as the portion of the Ute Mountain Reservation located in New Mexico), Montana, North Dakota (as well as that portion of the Standing Rock Reservation located in South Dakota and excluding the portion of the lands within the former boundaries of the Lake Traverse Reservation, which is covered under the permit for areas of South Dakota), South Dakota (as well as the portion of the Pine Ridge Reservation located in Nebraska and the portion of the lands within the former boundaries of the Lake Traverse Reservation located in North Dakota and excluding the Standing Rock Reservation which is covered under the permit for areas of North Dakota), Utah (except Goshute and Navajo Reservation lands (see Region 9)), and Wyoming.

Region 9: The Islands of American Samoa and Guam, Johnston Atoll, Midway/Wake Islands and Commonwealth of the Northern Mariana Islands; Indian Country in Arizona (as well as Navajo Reservation lands in New Mexico and Utah), California, and Nevada (as well as the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon, and the Goshute Reservation in Utah).

Region 10: The States of Alaska and Idaho; Indian Country in Alaska, Idaho (except Duck Valley Reservation (see Region 9)), Washington, and Oregon (except for Fort McDermitt Reservation (see Region 9)); and Federal facilities in Washington.

2. Limitations on Coverage

The proposed general permit includes a number of eligibility restrictions including: post-construction discharges; discharges which may adversely affect endangered or threatened species and critical habitat, or historic properties; discharges which may cause or contribute to exceedances of water quality standards; and discharges that are inconsistent with any applicable approved total maximum daily loads (TMDLs). Construction operators that do not meet the eligibility requirements of the proposed general permit would be required to submit an individual permit application or seek coverage under any alternate general permit, if available.

3. Deadlines and Permit Application Process

To obtain discharge authorization under the proposed general permit, dischargers would be required to submit a notice of intent (NOI) requesting discharge authorization. The NOI would be required to include basic information about the construction project (*e.g.*, operator name, site name, and site address) and certification that a storm water pollution prevention plan (SWPPP) has been prepared for the site describing the best management practices that the discharger will implement to control pollutants in the discharges in accordance with the requirements of the CWA. NOI due dates are as follows:

i. Large Construction (> 5 acres)

a. *Ongoing projects as of the effective date of the permit:* Within 90 days of the effective date of this permit (or by July 7, 2003 for facilities electing to remain covered by the 1998 Region 6 permit until it expires), unless permittee is eligible to submit a Notice of Termination (NOT) from coverage under a previous NPDES permit before the 90th day (or by July 7, 2003 for facilities electing to remain covered by the 1998 Region 6 permit until it expires), provided that the NOT is submitted in compliance with the permit requirements.

b. *New projects after the effective date of the permit:* Prior to commencement of construction activities.

ii. Small Construction (1–5 acres)

a. *Ongoing projects as of March 10, 2003:* By March 10, 2003.

b. *New projects after the effective date of the permit:* Prior to commencement of construction activities.

4. Storm Water Pollution Prevention Plans

The proposed general permit would require that all operators covered by the permit develop and implement a SWPPP. The SWPPP would be the principal means through which dischargers comply with the CWA's requirement to control pollutants in their discharges. All SWPPPs would be required to be developed in accordance with sound engineering practices and developed specific to the site. These SWPPPs would be required to be prepared prior to commencement of construction activities and then updated as appropriate. Specific elements to be addressed in the SWPPP include:

i. Pollution Prevention Plan Contents: Site and Activity Description,

ii. Pollution Prevention Plan Contents: Controls to Reduce Pollutants,

iii. Non Storm Water Discharge Management,

iv. Maintenance of Controls,

v. Documentation of Permit Eligibility Related to Endangered Species,

vi. Documentation of Permit Eligibility Related to Historic Places,

vii. Copy of Permit Requirements,

viii. Applicable State, Tribal, or Local Programs,

ix. Inspections,

x. Maintaining an Updated SWPPP,

xi. Signature, Plan Review and Making Plans Available,

xii. Management Practices,

xiii. Documentation of Permit Eligibility Related to Impaired Waters,

5. Permit Appeal Procedures

Within 120 days following notice of EPA's final decision for the general permit under 40 CFR 124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with Section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 (and authorized at 40 CFR 122.28), and then petition the Environmental Appeals Board to review any conditions of the individual permit (40 CFR 124.19 as modified on May 15, 2000, 65 FR 30886).

III. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order.

The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has exempted review of NPDES general permits under the terms of Executive Order 12866.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule-making requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under APA section 553 or any other law, and is thus not subject to the RFA requirements.

The APA defines two broad, mutually exclusive categories of agency action—''rules'' and ''orders.'' Its definition of ''rule'' encompasses ''an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *'' APA section 551(4). Its definition of ''order'' is residual: ''a final disposition * * * of an agency in a matter other than rule making but including licensing.'' APA section 551(6) (emphasis added). The APA defines ''license'' to ''include * * * an agency permit * * *'' APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes ''rule making'' requirements. The APA defines ''rule making'' as ''the agency process for formulating, amending, or repealing a rule.'' APA section 551(5). By its terms, then, section 553 applies only to ''rules'' and not also to ''orders,'' which include permits.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (*See, e.g.*, UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to 2 U.S.C. 658 which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. * * *''

As discussed in the RFA section of this notice, NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

VI. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities resulting from the proposed construction general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of the construction general permit for large construction activities have already been approved by the Office of Management and Budget (OMB) (OMB Control No. 2040–0188) in previous submissions made for the NPDES permit program under the provisions of the Clean Water Act. Information collection requirements of the construction general permit for small construction activities were submitted to OMB (OMB Control No. 2040–0211) for review and approval and will be published in a separate **Federal Register** Notice.

1. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 9, 2002.

Linda M. Murphy,

Director, Office of Ecosystem Protection, EPA Region 1.

2. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 6, 2002.

Walter E. Mugdan,

Director, Division of Environmental Planning and Protection, EPA Region 2.

3. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 10, 2002.

Victoria Binetti,

Acting Director, Water Protection Division, EPA Region 3.

4. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 5, 2002.

Mary P. Tyson,

Acting Director, Water Division, EPA Region 5.

5. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 11, 2002.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

6. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 9, 2002.

Leo Alderman,

Director, Water, Wetlands & Pesticides Division, EPA Region 7.

7. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 11, 2002.

Kerrigan G. Clough,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, EPA Region 8.

8. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 5, 2002.

John Kemmerer,

Acting Director, Water Division, EPA Region 9.

9. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 11, 2002.

Randall F. Smith,

Director, Office of Water, EPA Region 10.

[FR Doc. 02–32134 Filed 12–19–02; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 67, No. 245

Friday, December 20, 2002

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://hydra.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

71443–71796 2
71797–72088 3
72089–72362 4
72363–72550 5
72551–72826 6
72827–75798 9
75799–76102 10
76103–76292 11
76293–76670 12
76671–76980 13
76981–77146 16
77147–77398 17
77399–77644 18
77645–77906 19
77907–78120 20

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7631 72089
7632 72551
7633 76103
7634 76669
7635 77905

Administrative Orders:
Memorandums:
Memorandum of November 27, 2002 71795
Memorandum of November 6, 2002 75799

Executive Orders:
11246 (Amended by EO 13279) 77143
13278 76671
13279 77141
13280 77145

Presidential Determinations:
No. 2003–04 72363
2003–07 77645

7 CFR

27 77147
331 76908
718 71797
905 71798
989 71803
1942 77907
2200 76105

Proposed Rules:
46 77002
246 71774
319 77940
916 77003
917 77003

8 CFR

103 ..... 71443, 76256
212 71443
214 ..... 71443, 76256
235 71443
248 76256
264 71443
274a 76256
286 71443
299 71443

9 CFR

93 72827
94 77148
121 76908

Proposed Rules:
71 77004
82 77004
94 77004

10 CFR

Ch. 1 72091
1 77651
19 77651
20 77651
21 77651
32 77651
34 77651
39 77651
51 77651
55 77651
73 77651
81 77651
431 72274

Proposed Rules:
50 71490

11 CFR

100 76962
110 76962
111 76962
113 76962

12 CFR

223 76560
250 76560
506 ..... 76293, 77909
550 76293
551 76293
559 77909
560 76304
562 ..... 75809, 77909
563 77909
590 76304
591 76304

Proposed Rules:
223 76618
226 72618
701 72444
791 72113

13 CFR

Proposed Rules:
120 72622

14 CFR

21 72830
23 77399
25 76652
39 ..... 71450, 71452, 71455, 71808, 71810, 71812, 71816, 72091, 72553, 75809, 75812, 76106, 76109, 76111, 76673, 76981, 76982, 77401, 77404, 77405, 77653, 77666
71 ..... 71457, 71458, 71459, 71460, 71815, 72365, 72441, 76306
91 72830
97 ..... 71816, 72553, 76675, 76677
119 72726
121 ..... 72726, 72830
125 72830
129 ..... 72726, 72830
135 72726

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 20, 2002

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; published 12-20-02

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; published 12-20-02

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; published 12-20-02

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; published 12-20-02

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; extension; published 12-20-02

Technical amendments; published 12-20-02

Trade Agreements Act; exception for U.S.-made end products; published 12-20-02

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Stratospheric ozone protection—

Ozone-depleting substances; substitutes list; published 12-20-02

Air quality implementation plans; approval and promulgation; various States:

Montana; published 11-20-02

FEDERAL COMMUNICATIONS COMMISSION

Radio and television broadcasting:

Broadcast and cable EEO rules and policies—

Part-time employee classification; published 12-17-02

FEDERAL DEPOSIT INSURANCE CORPORATION

Conflict of interest:

Agency contractors; integrity and fitness; minimum standards; published 11-20-02

INTERIOR DEPARTMENT

Indian Affairs Bureau

Housing Improvement Program:

Technical amendments; published 12-20-02

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Pilatus Aircraft Ltd.; published 11-1-02

Pilatus Britten-Norman Ltd.; published 11-1-02

Rockwell Collins; published 11-5-02

Stemme GmbH & Co.; published 11-1-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Prunes (dried) produced in—

California; comments due by 12-27-02; published 10-28-02 [FR 02-27305]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Exotic Newcastle disease; disease status change—

Campeche, Quintana Roo, and Yucatan, Mexico; comments due by 12-23-02; published 10-22-02 [FR 02-26811]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

Child and Adult Care Program—

Strengthen program integrity; legislative reform implementation; comments due by 12-24-02; published 6-27-02 [FR 02-15776]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pacific halibut and sablefish; comments due by 12-27-02; published 10-29-02 [FR 02-27512]

DEFENSE DEPARTMENT

Acquisition regulations:

Commercial items—

Transportation of supplies by sea; comments due by 12-24-02; published 10-25-02 [FR 02-27106]

Federal Acquisition Regulation (FAR):

Reimbursement of relocation costs on lump-sum basis; comments due by 12-23-02; published 10-24-02 [FR 02-27083]

DEFENSE DEPARTMENT

Engineers Corps

Danger zones and restricted areas:

Sandy Hook Bay, NJ; Naval Weapons Station EARLE; comments due by 12-27-02; published 11-27-02 [FR 02-30028]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Missouri; comments due by 12-23-02; published 11-22-02 [FR 02-29610]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Missouri; comments due by 12-23-02; published 11-22-02 [FR 02-29609]

ENVIRONMENTAL PROTECTION AGENCY

Water pollution; effluent guidelines for point source categories:

Construction and development; storm water discharges; comments due by 12-23-02; published 10-16-02 [FR 02-26302]

Water programs:

Water quality standards—

Five Mile Creek, AL; designated use; comments due by 12-23-02; published 10-23-02 [FR 02-26845]

FARM CREDIT ADMINISTRATION

Farm credit system:

Loan policies and operations—

Young, beginning, and small farmers and ranchers; comments due by 12-23-02; published 9-23-02 [FR 02-24031]

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:

Private land mobile services—

450-470 MHz frequency band; airport terminal use frequencies; comments due by 12-23-02; published 11-21-02 [FR 02-29437]

FEDERAL ELECTION COMMISSION

Bipartisan Campaign Reform Act; implementation:

Electioneering communications—

FCC Database; comment request; comments due by 12-23-02; published 10-23-02 [FR 02-26483]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Reimbursement of relocation costs on lump-sum basis; comments due by 12-23-02; published 10-24-02 [FR 02-27083]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Medicare+Choice program—

Managed care modifications; comments due by 12-24-02; published 10-25-02 [FR 02-27142]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Abbreviated new drug applications certifying that patent claiming drug is invalid or will not be infringed; patent listing requirements and 30-month stays; comments due by 12-23-02; published 10-24-02 [FR 02-27082]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:

Housing Choice Voucher Program—

Homeownership option; eligibility of public housing agency-owned or controlled units; comments due by 12-27-02; published 10-28-02 [FR 02-27310]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Beluga sturgeon; comments due by 12-28-02; published 11-6-02 [FR 02-28334]

Critical habitat designations—

Bexar County, TX, karst-dwelling invertebrate species; comments due by 12-23-02; published 11-21-02 [FR 02-29620]

Vernal pool crustaceans and plants in California and Oregon; comments due by 12-23-02; published 11-21-02 [FR 02-29619]

JUSTICE DEPARTMENT

Federal Employees Liability Reform and Tort Compensation Act:

Suits based on acts or omissions of Federal employees and other persons; certification and decertification; comments due by 12-23-02; published 10-22-02 [FR 02-26832]

LEGAL SERVICES CORPORATION

Legal assistance eligibility; maximum income guidelines; comments due by 12-23-02; published 11-22-02 [FR 02-29611]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Reimbursement of relocation costs on lump-sum basis; comments due by 12-23-02; published 10-24-02 [FR 02-27083]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Insurance requirements; comments due by 12-26-02; published 9-26-02 [FR 02-24290]

Organization and operaations—

Reasonable retirement benefits for employees and officers; comments due by 12-26-02; published 11-29-02 [FR 02-30162]

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

Dispute adjudication procedures; comments due by 12-26-02; published 11-25-02 [FR 02-29709]

NUCLEAR REGULATORY COMMISSION

Materials licensees; financial assurance amendments; comments due by 12-23-02; published 10-7-02 [FR 02-25243]

POSTAL SERVICE

Postage meters:

Manufacture and distribution; authorization; comments due by 12-26-02; published 11-26-02 [FR 02-29939]

SECURITIES AND EXCHANGE COMMISSION

Securities, etc.:

Sarbanes-Oxley Act of 2002; implementation—

Audits and reviews; relevant records retention; comments due by 12-27-02; published 11-27-02 [FR 02-30036]

SMALL BUSINESS ADMINISTRATION

Small business size standards:

Job Corps Centers; comments due by 12-23-02; published 11-22-02 [FR 02-29647]

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

New York Marine Inspection Zone and Captain of Port Zone, NY; safety and security zones; comments due by 12-27-02; published 11-27-02 [FR 02-30105]

Port Valdez and Valdez Narrows, AK; security zone; comments due by 12-23-02; published 10-23-02 [FR 02-26974]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Incidents involving animals during air transport; reports by carriers; comments due by 12-27-02; published 10-18-02 [FR 02-26465]

Airmen certification:

Flight simulation device; initial and continuing qualification and use requirements; comments due by 12-24-02; published 9-25-02 [FR 02-14785]

Correction; comments due by 12-24-02; published 10-25-02 [FR 02-27169]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bombardier-Rotax GmbH; comments due by 12-23-02; published 10-23-02 [FR 02-26912]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Fokker; comments due by 12-23-02; published 11-21-02 [FR 02-29678]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

McDonnell Douglas; comments due by 12-23-02; published 10-24-02 [FR 02-26480]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Pratt & Whitney; comments due by 12-24-02; published 10-25-02 [FR 02-26909]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Short Brothers PLC; comments due by 12-23-02; published 11-13-02 [FR 02-28751]

Jet routes; comments due by 12-23-02; published 11-7-02 [FR 02-28366]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Child restraint systems; comments due by 12-23-02; published 10-22-02 [FR 02-26824]

TREASURY DEPARTMENT

International Investment Office

Foreign persons; mergers, acquisitions, and takeovers:

Voluntary notice filing; comments due by 12-23-02; published 11-21-02 [FR 02-29622]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Mixed use output facilities; guidance; comments due by 12-23-02; published 9-23-02 [FR 02-24138]

TREASURY DEPARTMENT

Thrift Supervision Office

Regulatory reporting standards:

Independent public accountants performing audit services for voluntary audit filers; qualifications; comments due by 12-26-02; published 11-25-02 [FR 02-29833]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2818/P.L. 107–361

To authorize the Secretary of the Interior to convey certain

public land within the Sand Mountain Wilderness Study Area in the State of Idaho to resolve an occupancy encroachment dating back to 1971. (Dec. 17, 2002; 116 Stat. 3020)

Last List December 19, 2002

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.